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MOTOR CARRIER ACT OF 1980

CIS RECORD ONLY:

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

STANFORD LIBRARIES

ON

OVERSIGHT OF THE MOTOR CARRIER ACT OF 1980

SEPTEMBER 21, AND DECEMBER 15, 1983

Serial No. 98-55

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MOTOR CARRIER ACT OF 1980

WEDNESDAY, SEPTEMBER 21, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The full committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to this hearing: Karen B. Phillips, professional staff member; Steve Palmer and Linda Morgan, minority staff counsels.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order, please.

This morning the Commerce Committee will conduct its third annual oversight hearing on the effects and the implementation of the Motor Carrier Act of 1980.

I might say that when we passed that act I think our philosophy in this committee and the Congress was that it was not the function of Government in enacting regulatory legislation to guarantee profit to any shipper for the sole purpose of guaranteeing profit to a shipper or to a carrier, nor were we to regulate business for the purpose of providing jobs if the sole purpose was providing jobs.

The concern of this Congress is to make sure that there is an adequate motor transportation system that will deliver goods to customers at a fair price and that will return a sufficient profit to shippers and to carriers so that they can remain in business. And if we can do that without regulation, there is no need for regulation.

I know that most of the witnesses today are addressing themselves to one or another of the aspects of the comments that I have made, but I will emphasize again if those who want to ship goods can get carriers at a reasonable price, and given normal economic circumstances if the carriers can make a profit, and given normal availability of carriers, if consumers can get goods at a fair price, then I see no need for continued regulation.

I might announce for those who may have come to hear Mr. Presser that he will not be appearing today. He announced last night that he would not be coming.

We will start this morning with the Secretary of Transportation, Elizabeth Dole.

Good to have you with us this morning.

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STATEMENT OF HON. ELIZABETH HANFORD DOLE, SECRETARY OF TRANSPORTATION, ACCOMPANIED BY CHARLES SWINBURN, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS

Secretary DOLE. Thank you, Mr. Chairman.

I am delighted to have this opportunity to appear before you to discuss economic deregulation in the trucking industry.

In addition to my prepared statement which you have, I would like to make a brief opening statement.

The Motor Carrier Act of 1980 bringing partial deregulation of the trucking industry has now been in effect for more than 3 years, of course. By and large the industry has responded to the basic reforms in that legislation as the Congress expected. New carriers have entered the market. New price and service options have been introduced. Carriers have become more efficient and innovative, and shippers, as well as consumers, have benefited from lower costs.

Much of this period, however, was marked by recession which reduced overall demand for trucking services. As a result, truck tonnage levels declined, causing decreased profits and increased business failures. In fact, both local trucking, which was not substantially impacted by the Motor Carrier Act, and intercity trucking, which of course was, exhibited levels of business failures much higher than average as the economy weakened. This points strongly to the recession and not to deregulation as the primary cause of these failures.

With the economy now recovering, the trucking industry is responding to renewed demand for freight services. The freedom to compete, together with the greater productivity provided by the Surface Transportation Assistance Act, gives truckers the potential for greatly improved earnings as the economy continues to strengthen.

As the industry emerges from this transition period, those who adjust most effectively to a more competitive way of life by reducing operating costs, innovating services, and developing new markets, will prosper the most.

On the other hand, the carriers who resist change, who opt for the hope of reregulation rather than the challenge of deregulation may find it difficult to compete. For shippers there are now more opportunities to shop for price and service options and negotiate service packages to consolidate shipments and otherwise seek more efficient distribution strategies, and to work closely with carriers to design transportation services that best meet their overall needs.

Evidence collected during the past 3 years indicates that shippers are well pleased with motor carrier reform. Rural shippers continue to receive good service, and almost all shippers report that more carriers are competing for their business than before the Motor Carrier Act was passed. And the majority say that deregulation has resulted in lower rates.

Looking ahead, we firmly believe that attitudes as well as institutions will help shape the future of the trucking industry. While certain segments of the industry such as contract and private carri-

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ers have been sympathetic to reform all along, we are now beginning to see a broadening of this acceptance.

Support for regulatory reform has grown increasingly stronger on the part of industry executives. A recent survey done by the Consulting Center of Marlboro, Mass. found that 40 percent of the trucking executives surveyed no longer felt that antitrust immunity was necessary. In addition, a 1982 survey of Florida motor carriers undertaken for the Department of Transportation showed that 47 percent of the respondents either expressed no preference or preferred deregulation of their intrastate trucking industry.

In summary, Mr. Chairman, we view the first phases of motor carrier regulatory reform as in place and working as intended. We believe the public has benefited from the reforms already implemented and will benefit even further from more deregulation.

In that regard, we agree with the report of the Motor Carrier Ratemaking Study Commission which you chaired. We concur in recommending the removal of all antitrust immunity for motor carrier collective ratemaking. In fact, Mr. Chairman, we are so encouraged by the results so far and the outlook for the future, we are actively considering legislation to completely eliminate all economic regulation of the interstate trucking, domestic water carrier, and surface freight forwarder industries.

We look forward to working with you and the committee in the development of legislation in this area.

That concludes my remarks, Mr. Chairman, and I will now be glad to answer any questions that you may have for me at this time.

Let me just say that I am very pleased that Charles Swinburn is here with me, the Deputy Assistant Secretary for Policy and International Affairs at the Department.

The CHAIRMAN. Mr. Swinburn, good to have you with us.

You indicated, Madam Secretary, that the Department is considering legislation for further deregulation in a variety of areas, freight forwarders and entry and what not. Where are those suggested bills and legislation?

Secretary DOLE. That legislation is currently in the Office of Management and Budget.

The CHAIRMAN. It has gone out of the Department of Transportation?

Secretary DOLE. That's right.

The CHAIRMAN. With a very strong affirmative recommendation.

Secretary DOLE. It is currently being discussed and debated. We are working through the legislation and of course, I am very actively involved in that process.

The CHAIRMAN. Well, I hope that it has simply gone into a current rather than a whirlpool and that we will see it come out again in some form.

You mentioned small communities. One of the things that struck me when the Motor Carrier Ratemaking Study Commission had a hearing in Florida was the fact that we had either three or four State legislators appear before us from different areas of the State, and as I recall, all but one of them from small towns. And there is probably nobody more in touch with their constituents than legisla-

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tors, and not a single one of them had any complaint from any of their constituents about lack of service in small towns.

Now, of course, Florida had had total deregulation at that stage for about a year, and it has been almost going on 2½ years now.

You mentioned that you did not find any particular complaint from small town shippers. I have not found any complaint from any small town shippers. Do you have any departmental studies that you can give us that can buttress that conclusion?

Secretary DOLE. Yes, Mr. Chairman, and I also believe last December we indicated that in testimony there would be a forthcoming study of the small carriers. Indeed, the preliminary results of that should be available by the end of October, and by the end of November we should have the full report available for you.

The CHAIRMAN. It would be very helpful to have it, because you will recall when we were going through the initial throes of deregulation, one of the arguments was that the major truck lines serve those small towns at a loss and serve them in the sense of a public service, and that with deregulation the small towns would just get no service, and they would dry up and go away.

I just know we would get complaints if that was happening. They would not take it sitting down, standing down, lying down, however. And indeed, I have gotten the same thing you have. They have more service, greater variety of service than they had before.

Secretary DOLE. Well, the indications, I believe, from the ICC study, which Chairman Taylor referred to when he testified last year, are that where changes have occurred, they have been improvements in service to the small communities. Of course, the rural towns, have always received most of their freight service by private carriers and by UPS.

The indications are from the studies that we have, and the studies that were done especially for DOT, that overall there is more service and that the small communities are not suffering. I think there was a minority of 20 percent who did indicate they felt there was less frequency of service, but the picture has been a positive one overall. On balance, more rather than fewer carriers are serving the areas. The rates in the first year apparently did not rise by more than the cost of living for the majority of the rural areas.

The CHAIRMAN. I think we will have some testimony later from some of the shipper associations indicating that the principal increases they have experienced have come where the rate bureaus are still strongly in effect. It is less than truckload lots. It is not particularly confined to small towns, though. It can be just as much in big towns. But where the areas of deregulation are fully fitting in and where the expectation of the end of single line immunity is coming, that by and large the competition is working.

I have suggested from time to time—and I will not ask you to comment on this right now but to think about it—I feel very badly for those people who get caught in the middle of Government regulation, and then we change the rules on them in midstream, perhaps to their detriment and certainly not their fault.

And there are those who have complained that when single line immunity, antitrust immunity, ends next July that for all practical purposes, joint line immunity will end even though the law does not require it.

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I understand what they are saying. I am not sure I follow their conclusion. But I have suggested to some that I would not be beyond extending for several years the antitrust immunity for single line if, in exchange, we legislated an end to joint line immunity and perhaps even to the entire motor carrier division in the Interstate Commerce Commission, transferring whatever safety or other functions we felt had to be kept either within the ICC or to your Department or something like that.

And I throw that out for consideration to you and to others, but emphasize that the tradeoff would be a guaranteed sunsetting of all immunity of all kinds and perhaps tied with that an end to the motor carrier division.

I do not ask for your comments on that now because it is something to be thought about rather than responded to off the top of your head.

Secretary DOLE. Mr. Chairman, I will just make one comment, if I may, on that. If this proposal were to increase the support of the coalition of the constituency groups, if that perhaps is one thing you have in mind in suggesting such a compromise, I think it would be well worth taking a hard look at it.

The fact that we have had a major recession, at the same time that we have been going through the period of deregulation under the Motor Carrier Act of 1980, I think has clouded the picture a bit because some in the industry who oppose any further deregulation feel that the drop in tonnage and the decreased profits and the unemployment and the bankruptcies that have occurred are the result of deregulation. Of course, the industry did have the worst year in 1982 than they have had since the 1930's.

The CHAIRMAN. Yes, but so did most businesses.

Secretary DOLE. Well, this is going to be my point, yes. But on the part of some there is a concern that that is the fault of deregulation, whereas I am convinced that it is the recession. There is data to back that up—for example, GAO's studies with regard to unemployment and other studies that we have bear this out.

But I think that since we have had these major problems on the part of the industry at the same time that we have been going through deregulation, there is a perception by management and by workers in a number of instances that deregulation is the major cause.

It seems to me as I look at what has been happening that there is a change of attitude on the part of many—and I mentioned that in my formal statement—that a number of people in the industry are beginning now to feel that deregulation is the right way to go. But my feeling is there is a matter of timing here on just when we go to that next step. And perhaps as the economy really picks up and there is an opportunity here for some of these business problems to be resolved through economic activity, there will be a true picture of deregulation as the plus that I feel it is. And attitudes will change to the point where there would be broader support for that next step.

I wonder at this point whether more deregulation would indeed make it all the way home in terms of having as broad a constituent base of support as it would need to have.

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The CHAIRMAN. I think it would be worth the tradeoff if you could get that broad base of support. And if you set a deadline of July 1, 1986, or January 1, 1986, or January 1, 1987, that is not a millenium away. I remember when we deregulated the airline industry and sunsetted the CAB, and in 1978, 1985 seemed like an eternity. And now in 1½ years, the CAB is going out of business, period. And you would not be able, I think, today to get a single major air carrier to go back to regulation, whereas at the time we passed the bill, only United supported it and all of the others opposed it.

But now if they had to go back and apply for rate increases and route permissions, they would not do it. And I think you would see the same thing in trucking. And if I thought I could get that kind of coalition in exchange for a 2- or 3-year phaseout, I would accept it—and I throw that out publicly—but it would have to be on that agreement.

I am not talking about extending for 2 years the elimination of single-line immunity in exchange for a promise that maybe in 2 years we would then look at the rest of it and see what was happening. It would have to be as a package.

Now, Elizabeth, I have no more questions. I appreciate very much, and I will say to this audience, her full-hearted support in our efforts to go further on deregulation. I know the problems she faces. The bill has gone out of the Department of Transportation, and the recommendation has gone out of the Department of Transportation, I know. I know what that recommendation is, and I am very pleased with it. And I hope that the recommendation finally comes from the White House fully endorsing what the Secretary has sent down there, because that recommendation is fully in line with what ought to be the normal economic views of far and away the majority of the President's advisers.

It may not comport with all of the political advice the administration gets, but it is fully in line with their economic philosophies.

Secretary DOLE. Well, I appreciate the opportunity, Mr. Chairman, to appear this morning. Thank you.

The CHAIRMAN. Thank you, Madam Secretary.

Mr. Swinburn, thank you.

[The statement follows:]

STATEMENT OF HON. ELIZABETH HANFORD DOLE, SECRETARY OF TRANSPORTATION

Mr. Chairman and members of the Committee, thank you for inviting the Department here today to discuss the Administration's views on economic regulation of motor carriers of property.

The Motor Carrier Act of 1980 (MCA) has now been in effect for more than three years. During much of that period, the trucking industry—like most industries—has been burdened by weak demand for its services. Substantial decreases in truck tonnage levels have resulted in decreased profits and increased numbers of business failures, both in local and interstate trucking.

However, throughout these difficult times, the industry as a whole has continued to provide good service to shippers and receivers throughout the nation. Perhaps the most remarkable news we have to tell today is that there is no new story—the trucking industry as a whole continues to move the freight wherever it is needed.

In many respects, the first volume of the motor carrier regulatory reform story is nearly complete. With the exception of removal of antitrust immunity for single-line ratemaking, most of the basic reforms contemplated by the MCA have been implemented. We agree with the conclusions of the Motor Carrier Ratemaking Study

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Commission's fine report, which recommended the removal of all antitrust immunity for motor carrier collective ratemaking.

In the meantime, carriers have been adjusting to a more competitive way of life. Some among them have voluntarily sought out ways to improve operating efficiency and respond better to shipper needs; many of these carriers will prosper. Others have resisted change, and for them the period of adjustment may prove more difficult.

Shippers, too, have been confronted with a new transportation environment. No longer does the shipper play a substantially passive role in the overall distribution process: many opportunities exist to shop for various price and service options, to negotiate service packages, to consolidate shipments and otherwise seek more efficient distribution strategies, and to work closely with carriers to design transportation services that best meet the shipper's overall needs. For shippers, as for carriers, transportation planning now entails substantially more than thumbing through a well-worn rate book.

The evidence we have seen during the past three years shows that shippers are happy with the results of motor carrier reform. The most recent results of a DOT sponsored multi-year survey of truck service to small communities are essentially the same as those of previous years: rural and isolated shippers continue to receive good service, with more shippers noting service improvements than deteriorations. While some shippers receive less frequent service, almost all shippers note that more carriers are competing for their business than before the MCA.

Moreover, in Florida—which totally deregulated its intrastate trucking industry in 1980—shippers seem to be similarly satisfied with the trucking service they are receiving. A DOT sponsored study of Florida truck deregulation found that both in 1981 and 1982, the vast majority of Florida shippers surveyed approved of deregulation. Most respondents in both years noted no change in overall service levels; of those who did report changes in service levels, three times as many reported improvements rather than deteriorations. A majority of resondents in both years perceived that deregulation had resulted in truck rates that were lower than they would have been under regulation.

As the members of this committee are well aware, the short-run picture is not uniformly rosy. Sharply lower motor carrier tonnage has contributed to reduced profits for most, losses for many, and bankruptcy for some. According to the most recently available data from Dun & Bradstreet, the absolute numbers of business failures for both local and intercity trucking continued to rise sharply through the first half of 1982. These two series have moved in very similar fashion since 1978. Both local trucking—which was not substantially impacted by the Motor Carrier Act—and intercity trucking—which, of course, was—exhibited much higher levels of business failures as the economy weakened. We believe this is strong evidence that the recession has been the primary cause of these failures.

In summary, while overall demand for motor carrier services has continued to be weak, shippers are still receiving good service. The long term decline in tonnage appears to have bottomed out, and the beginning of recovery seems to be at hand. For the many carriers that have pursued cost-reduction and efficiency-enhancing strategies during the recent hard times, better times ahead will mean robust profits and the means to invest in the future.

With respect to the future, we see two especially promising long term trends: improving motor carrier efficiency through greater knowledge by carriers of their internal operating characteristics, and new ways of facilitating informational flows among carriers and shippers.

With respect to the first trend, there would appear to be little disagreement between government and industry on one very important maxim for the motor carrier industry of the 1980's: "Know your costs!" The industry's development of personal computer software for costing individual motor carrier shipments should help put necessary cost and pricing data within the reach of even small carriers.

With respect to the second trend, both computers and people are helping to meet the informational needs of the trucking industry. In particular, we have observed the recent rapid growth of property brokers, who facilitate informational and traffic flows by matching up carriers and shippers. Brokers have long played an important role in the transportation of exempt commodities; in the past three years they have begun to be an important factor in arranging the transportation of regulated commodities as well.

The growth of property brokerage is important to the trucking industry as a whole, but particularly so for the future of less-than-truckload (LTL) transportation. Many of the activities engaged in by brokers—such as consolidating LTL shipments into full truckloads, arranging for truckload loads to be "topped off" with LTL ship-

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ments, providing marketing services for smaller carriers, and making information about a wide variety of motor carriers easily available to shippers—help encourage the maximum possible levels of competition in the movement of LTL freight. These help assure that shippers of LTL freight will have as many alternatives as possible, a function also fulfilled by LTL carriers, freight forwarders, and shippers associations.

In addition, attitudes as well as institutions will help shape the future of the trucking industry. In the three years since enactment of the MCA, we have seen a gradual trend toward acceptance of reform on the part of industry exectives. While certain segments of the industry—such as contract and private carriers—have been sympathetic to reform all along, we are beginning to see a broadening of this acceptance. A recent survey done by The Consulting Center of Marlboro, Massachusetts found that forty percent of the trucking executives surveyed no longer felt that antitrust immunity was necessary. In addition, the 1982 survey of Florida motor carriers undertaken for DOT showed that 47 percent of the respondents either expressed no preference or preferred deregulation of their intrastate trucking industry. We will, of course, be glad to provide this and our other recent motor carrier studies to this Committee.

Finally, we have seen no valid statistical evidence linking deregulation with the safety performance of the trucking industry. Nevertheless, I have made it clear that highway safety is one of my highest transportation priorities, and motor carrier safety regulation will be given a greater degree of attention that it has received in the past. In this regard, the Department is moving rapidly to implement the recently enacted five-year program of grants to the States for increased enforcement of truck and bus safety. Under this program, endorsed by the Administration, the States could soon begin receiving substantial sums to improve safety enforcement through 1988.

In summary, as the Department also testified last year, we believe that motor carrier reform is working well. Throughout difficult times, the industry has responded to economic regulatory reform in the ways intended by the Congress: by the creation of new carriers and the expansion of existing carriers into new markets, by the provision of a wide variety of new price and service options to shippers, and by a continuing search for more efficient operating techniques, all leading to lower rates for shippers and savings to consumers. As tonnage levels begin to improve, we believe that those carriers who have best adapted to the new, more competitive environment will begin to reap the economic rewards of their actions.

Legislation continues to be considered within the Administration to further economic deregulation of the interestate trucking, domestic water carrier, and surface freight forwarder industries. While we are not submitting legislation at this time, we continue to believe that deregulation is working and to be optimistic about future deregulatory efforts.

That concludes my prepared remarks, Mr. Chairman. I will not be glad to answer any questions you or other members of this Committee may have.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question 1. In your testimony, you stated that motor carriers have become more efficient and innovative and that new price and service options have been introduced. Please provide some examples of these options.

Answer. Most carriers now offer discounts of one kind or another; for example, some motor carriers are offering discounts to carrier based on total monthly tonnage shipped.

Motor carrier have developed new intermodal service options such as linking regional carriers by means of "piggyback" rail service, as Sun Carriers now offers. This new system makes LTL consolidation almost time-competitive with transcontinental truckload service, and is more energy efficient, as well. Other carriers, such as St. Johnsbury, reward shippers who elect to ship intermodally by offering a lower rate.

To keep track of the various discounts from published rates and to facilitate competitive bidding, Transportation Concepts and Services, Inc., offers computer software which allows carriers and shippers instant retrieval of discounted rates by classification and commodity.

Shippers have been able to create new arrangements for more continuous and efficient use of the carriers' fleets. For example, DuPont offers its carrier suppliers a

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flat cents per ton mile for hauling, irrespective of location, and guarantees full return hauls or payment in lieu thereof. DuPont routes the freight in such a way that a balanced haul results.

General Motors has instituted a Japanese-style "just-in-time" system, in which suppliers of parts must ship via motor carriage so that in-process inventory arrives four hours prior to the time needed. Suppliers have been encouraged to move closer to the GM production facilities, and carriers are carefully selected to assure highest service levels. General Motors now works with fewer carriers, and demands high service standards.

FFE Transportation Services promises customers that they can integrate order cycle systems with scheduled LTL shipping, and save the customer money. Some rural LTL carriers have developed unmanned terminal systems to save customer expense.

These are merely a few of the price and service innovations observed since the passage of the Motor Carrier Act. Increased competition has spurred carrier and shipper managements to innovate in these, and many other, directions.

Question 2. You stated in your testimony that rural shippers continue to receive good service. What specific studies does the Department have to support this assertion?

Answer. Research at Syracuse University, James Madison University, and the University of Kentucky have found similar results: service to rural areas is largely unchanged, and for those who have experienced changes (roughly twenty per cent) more have reported service improvements than service deteriorations. Studies include Alice E. Kidder, "Second Followup Study of Shipper/Receiver Mode Choice in Selected Rural Communities", 1983; Williamson, *et al,* "Deregulation's Impact on Selected Distribution Activities," in Alice E. Kidder, ed., *Conference on Regulatory Reform in Surface Transportation,* Syracuse University, March 1983. Professor Kidder is now with Babson College and in the process of conducting a followup to her Syracuse University study; no report is available at this time.

Perhaps the strongest endorsement of service to rural shippers is to be found in James Freeman's study (U. of Kentucky), "Effects of Transportation Deregulation on Motor Carrier Service in Florida and Arizona": ". . . both urban and rural shippers have had a positive experience under deregulation . . . . the differences between the groups are so minimal as to be statistically insignificant . . . Florida responses from rural areas in 1982 showed that shippers approved of deregulation by 61 percent, versus 9 percent for regulation, with 30 percent having no preference." (p. 26)

A bibliography of related studies is attached.

POST-MOTOR CARRIER ACT OF 1980

1. A One-Year Assessment of the Motor Carrier Act of 1980: Small Community Trucking Service in Nevada and Oregon, Karen L. Borlaug, U.S. Department of Transportation, Office of the Secretary, Office of Regulatory Policy, November 1981.

2. Background Paper on the Impact of the Closing of the Rio Grand Motorway Terminals on Sixteen Small Towns in Colorado, U.S. Department of Transportation, Transportation Systems Center, 1982.

3. Examination of the "817 Points," Robert Thibodeau and Karen L. Borlaug, U.S. Department of Transportation, Office of the Secretary, Office of Regulatory Policy, December 1981.

4. Followup Study of Shipper/Receiver Mode Choice in Selected Rural Communities, Alice E. Kidder, prepared by Syracuse University, 1982, National Technical Information Service, September, 1982.

5. The Impact of Regulatory Reform on U.S. Domestic Distribution Activity, K. C. Williamson, et. al., unpublished, James Madison University, 1982.

6. Small Community Study, Interstate Commerce Commission.

7. Small Community Survey, California Public Utilities Commission, May, 1981.

8. A Survey of Motor Carrier Deregulation in Florida: One Year's Experience James W. Freeman.

PRE-MOTOR CARRIER ACT OF 1980

9. An Evaluation of Charges That Regulatory Reform Will Degrade Small Community Motor Carrier Service, Interstate Commerce Commission, Office of Policy and Analysis, March 1980.

10. A Study of Trucking Service in Six Small Communities, Karen L. Borlaug, et. al., U.S. Department of Transportation, Office of the Secretary, Office of Transportation Regulation, November 1979.

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11. Common Carrier Obligations and the Provision of Motor Carrier Service to Small Rural Communities, Dennis A. Breen and Benjamin Allen, Washington, State University, under Contract DOT-RC-82022, July 1979.

12. Deregulation of Motor Carriers—Is it in the Best Interest of Virginia's Rural Communities? Virginia State Corporation Commission Division of Motor Carrier Regulatory Planning and Control, 1979.

13. Economic Analysis and Regulatory Implications of Motor Common Carrier Service to Predominantly Small Communities, R. L. Banks & Associates, Inc., under contract DOT-OS-50095, June 1976.

14. The Impact of Federal Trucking Regulation on Service to Small Communities, Michael W. Pustay, Purdue University, under Contract DOT-OS-70069, March 1979.

15. The Impact on Small Communities of Motor Carrier Regulatory Revision, prepared at the request of the Senate Committee on Commerce, Science, and Transportation by Policy and Management Associates, Inc., June 1978.

16. The Impact of Trucking Deregulation on Small Communities: A Review of Recent Studies, Congressional Budget Office, Natural Resources and Commerce Division, February 1980.

17. Impacts of Proposals for Reform of Economic Regulation on Small Motor Carriers and Small Shippers, Charles River Associates, under Contract DOT-OS-60527, July 1977.

18. Motor Carrier Pooling Agreements, Barbara B. Anthony, U.S. Department of Transportation, Transportation Systems Center, Cambridge, Massachusetts, Report No. SS-212-U7-23A, December 1976.

19. Motor Common Carrier Freight Rate Study for Nine Western States, prepared for Federation of Rocky Mountain States, Inc., in cooperation with U.S. Department of Transportation, under Contract DOT-OS-40071, May 1975.

20. "Regulatory Reform and Motor Common Carrier Service to Small Towns and Rural Communities," Georgia Canellos, U.S. Department of Transportation, Office of the Secretary, Office of Transportation Regulation, November 1976.

21. Small Community Study Preliminary Data, California Public Utilities Commission, March 1980.

22. Shipper/Receiver Transportation Mode Choice in Selected Rural Communities, Alice E. Kidder and Harold G. Willis, North Carolina A&T State University, under Contract DOT-OS-80007, June 1980.

23. Small Rural Shippers: Legal and Self-Help Remedies for Problems With Interstate Motor Carriers, Barbara B. Anthony, U.S. Department of Transportation, Transportation Systems Center, Cambridge, Massachusetts, Report No. SS-222-47-42, August 1977.

24. Trucking Service in Four Small Communities in Minnesota, Ecosometrics, Inc., under Contract DTOS59-80-C-00050, August 1980.

25. Trucking Service in Four Small Communities in Pennsylvania, Ecosometrics, Inc., under Contract DTOS59-80-C-00050, August 1980.

26. Trucking Service in Six Small Michigan Communities, Karen L. Borlaug and Lawrence T. Phillips, U.S. Department of Transportation, Office of the Secretary, Office of Transportation Regulation, March 1980.

27. Trucking Service in Two Small Alabama Communities, M. Dennis Marvich and G. Cleveland Thornton, U.S. Department of Transportation, Office of the Secretary, Office of Transportation Regulation, March 1980.

28. Trucking Service to Two Small Kansas Communities, Charles C. Orvis, U.S. Department of Transportation, Office of the Secretary, Office of Transportation on Regulation, March 1980.

Question 3. The Motor Carrier Lawyers Association testified that the Interstate Commerce Commission has displayed "passivity with regard to carrier safety and fitness." (A) What is your view of this statement? (B) Do you believe there is a safety problem in the motor carrier industry? (C) Does the Department have any evidence as to whether or not there is a direct correlation between safety and economic deregulation?

Answer. (A) Since the transfer of functions relating to regulation of interstate motor carriers' safety of operation from the Interstate Commerce Commission to the Department of Transportation in 1967, there have been in effect Memoranda of Agreement between the two Agencies setting forth procedures for the reporting to the Interstate Commerce Commission on the safety compliance posture of motor carriers seeking new or additional operating authorities before the Commission.

Until recently, the Commission in almost all cases followed the Department's recommendations and did not grant operating authority to motor carrier applicants who had a poor safety record with the Department.

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In the Robbins Trailer Service motor carrier application, under ICC Docket No. MC-160342, the motor carrier was granted operating authority by the Commission after the Department had reported that the motor carrier applicant was not in satisfactory compliance with the Department's Motor Carrier Safety Regulations.

At the present time the Department has filed a petition with the United States Court of Appeals for a review of the Commission's final order granting operating authority to this motor carrier.

(B) As long as there are accidents and fatalities in any mode of transportation, the Department will endeavor to improve transportation safety. In motor carrier transportation, safety—as measured in fatalities in motor carrier accidents—has improved since the MCA of 1980 (from 3,072 fatalities in 1979 to 2,479 fatalities in 1982). The Motor Carrier Safety Assistance Program, established pursuant to Section 402 of the Surface Transportation Assistance Act of 1982, has great potential to improve safety further, by providing grants to States to implement motor carrier safety enforcement programs.

(C) To date there is no evidence of a correlation between deregulation and commercial motor vehicle safety. Truckers' accident rates appear to be about one accident per million miles for unregulated (exempt) carriers as well as common and contract carriers.

Question 4. The Committee heard testimony from some witnesses noting that less-than-truck load traffic rates have risen considerably, due in large part to the fact that most of these rates are set in rate bureaus. Do you believe the Interstate Commerce Commission has acted properly in allowing these rate increases?

Answer. It is relatively easy to relate costs to rates in the case of truckload traffic, since there are few fixed costs, and the problem of allocating fixed costs among individual shipments does not occur when only one shipment is involved. However, in the case of less-than-truckload traffic, fixed costs of both capital (terminals) and labor (loading dock or platform handling costs) are relatively high, and there is no unique or superior method of allocating them among shipments on the basis of size or commodity. Since the underlying costs are thus so indeterminant, the "right" rate—or rate increase—can also not be determined, so rate regulation is bound to be imperfect.

QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS THERETO

Question 1. There have many reasons given for the record number or bankruptcies in the trucking industry over the last three years. Obviously, the economy has indeed has a lot to do with that, as well as deregulation. Regardless of what the cause may be, I believe it is safe to say that most would agree that the trucking industry is operating on a quite narrow margin of return. Do you think that most smaller, truckers will be able to absorb the $1600-$1900 user fee scheduled to begin next July? Would you agree that a flat user fee of this type puts the small trucker at a real competitive disadvantage against the big trucking firms?

Answer. According to Dun and Bradstreet, the figures for business failures among local trucking firms, which were not directly affected by the Motor Carrier Act of 1980, and among intercity trucking firms, which, of course, were, have continued to move together with a very high degree of correlation over time, including the last three years. We believe this is powerful evidence that the recession is the primary cause of the trucking failures we are now seeing.

The smaller trucking operations, i.e., those with five or fewer trucks will not be required to absorb the first increase until July 1, 1985. It was in recognition of the difficulty that a smaller operation may have with the tax increase that they will be paying at a lower rate than trucking operations of greater than five vehicles for the entire legislated life of the tax. Moreover, the flat fee can be paid quarterly, thus substantially reducing the impact of the tax on cash flow. In addition, the fee is tax-deductible, thereby minimizing the impact on after-tax income.

For all trucks over 75,000-pounds gross vehicle weight (small trucking companies and large combined), it is estimated that the sum of all the Federal user fee increases in the STAA of 1982 will increase the operating costs (exclusive of labor costs, terminal costs, overhead, etc.) of the vehicles by about 3 percent. In terms of total trucking costs, the increases represent about 1 to 2 percent, depending upon the type of trucking operation. Because of the diverse operating characteristics of the many small carriers, it is difficult to generalize on their ability to absorb cost increases; however, we have tried to structure the tax and phase it in so as to minimize its impact and allow them sufficient time to plan how to deal with it.

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It should be noted that vehicle operating costs tend to be a larger share of total revenue for small concerns than for big ones, and so the user fee increases will likely be more of a burden for small carriers than for larger ones. Any operating cost increase burdens small carriers more than larger carriers, but this is a function of the difference in the structures of the firms, not a function of the cost increase. This does not mean that road use charge cost the small operator more than larger companies but rather than they are a larger share of the cost structure of small carriers because they do not bear many cost which the larger carriers bear. An additional point of consideration is that for many independents who lease their services to large carriers, the up-costs of vehicle registration, taxes, etc., are often advanced by the large carrier with the repayments made by the independents over time.

Question 2. I have no problems with a tax based on use, but do you think it is fair to tax a small, independent trucker who may travel 30,000 miles per year the same amount as a trucking firm whose trucks may run over 200,000 miles per year? Is this really a tax on use?

Answer. A very low mileage truck would not pay the same overall tax as a very high mileage one because the heavy vehicle use tax is not the only user fee paid. Low mileage heavy truck owners would pay less fuel tax, less tire tax, and probbly less tax for new trucks and trailers since their vehicles would have a longer life. The heavy truck use tax is contained in the total package of highway taxes primarily to assign tax liability that more closely reflects the cost responsibility of trucks with higher axle and overall loads, i.e., those approaching 80,000 GVW. Without the heavy truck use tax, the heaviest vehicles would greatly underpay in comparison to the damage caused by their "use' of the highways. The Department is exploring alternatives to the heavy truck use tax, as required by Section 513(g) of the Surface Transportation Assistance Act of 1982.

It should be remembered that there is a large variation in annual miles driven by different categories of trucks. Our information shows that independents operating heavy combination trucks drive extensive annual miles, closer to 100,000 miles than to 30,000 miles. In addition, many larger company heavy vehicles (e.g., private carriers and city-fleet operations of large over-the-road companies) drive low annual miles, closer to the 30,000 miles you referenced for independents.

Question 3. Could you ever envision the Department of Transportation supporting some form of a diesel differential bill in lieu of the strict user fee?

Answer. Of course, I do not want to prejudge the results of our study of alternatives to the heavy vehicle use tax by committing myself to any specific tax alternatives until all of the information has been gathered and analyzed. However, there are some highway user tax structures that include a diesel differential which I can envision the Department supporting. In fact, our working paper on the study, which was released in July, noted that the option combining a diesel differential with a heavy vehicle use tax, reduced in both the number of vehicles liable and the maximum amount charged, was a promising alternative because it met the revenue maintenance and allocation criteria and could improve equity among users within the same categories while reducing the lump sum payments burden for those liable for the heavy vehicle use tax. There may be other alternatives employing a diesel differential that the Department could support; however, I would add that any such alternative would have to incorporate some measure reflecting the weight component of highway use. An approach which proposes reliance entirely on a diesel differential as a substitute for all of the heavy vehicle use tax could not be supported by this Department since it could not adequately account for the weight variation.

The CHAIRMAN. We will next take the Chairman of the Interstate Commerce Commission, Reese Taylor.

Good morning, Mr. Chairman.

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY RONALD YOUNG, DIRECTOR, BUREAU OF ACCOUNTS; BERNARD GAILLARD, ASSOCIATE DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE; WILLIAM SOUTHARD, DIRECTOR, OTA; AND JAN ROSENAK, LEGISLATIVE COUNSEL

Mr. TAYLOR. Good morning to you, Mr. Chairman.

The CHAIRMAN. Good to have you with us.

Why do you not introduce who you have and go right ahead?

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Mr. TAYLOR. Mr. Chairman, I want to thank you for the opportunity to appear here today at the third annual Senate oversight hearing to present the views of the Commission with regard to the implementation and the effects of the Motor Carrier Act of 1980.

Let me begin by introducing those at the table with me this morning. On my far left is Bureau of Accounts Director Young. On his right his Associate Director Gaillard of the Office of Compliance and Consumer Assistance. On my far right is OTA Director Southard, and on my immediate right is the Commission's Legislative Counsel, Jan Rosenak.

In addition to my full statement, appendices are included which provide additional information on Commission proceedings, and also a package of studies and reports issued since last year's oversight hearing either in response to congressional mandates under the act or as part of the Commission's ongoing effort to monitor the effects of the act.

At prior Motor Carrier Act oversight hearings the Commission has testified that the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980; and I would like to strongly reaffirm that view today.

Despite the serious financial difficulties that some motor carriers were experiencing at the time of last year's hearing on December 14, 1982, we reported that the significant reforms of the Motor Carrier Act, namely eased entry, rate flexibility and reduced antitrust immunity, were being achieved.

Clearly, the environment in the trucking industry had already become more competitive last year. And with regard to the industry's declining financial performance, the Commission noted last December that economic conditions rather than regulatory reform certainly appeared to be the principal cause.

I am pleased to report that the latest figures indicate that the motor carriers' financial picture has improved. As we predicted, the carriers' earnings are improving along with the general recovery of the economy. And I have some specific figures for you if you would like us to——

The CHAIRMAN. Let me interrupt, if I might, Reese, just to ask you. I have not watched closely in the last 3 or 4 weeks, but prior to that time, as I recall, the stocks of the motor carrier companies were advancing not just as well as the Dow but were advancing better than the Dow, so that somebody has faith that the industry is going to do quite well.

Mr. TAYLOR. They certainly were. And as a matter of fact, many of the investment houses have written very favorable reports on motor carrier investments, and they have even selected particular companies. I have seen a number of those.

The CHAIRMAN. I have not told you, but I have kidded him several times. Steve Murphy of Yellow Freight is on the Motor Carrier Ratemaking Commission. And each time before the meeting I ask him how Yellow is doing, and Yellow has always been consistently doing quite well, so much that he assured me that before the next meeting he is going to advise all of the major stockholders to put up their stock for sale the day before so that the stock goes down significantly on the day of our meeting.

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Mr. TAYLOR. Might I pause at this juncture to give you some figures?

The CHAIRMAN. Yes.

Mr. TAYLOR. You might be interested in having them.

For example, a comparison of the first quarter of 1983 with the first quarter of 1982 shows that operating revenues increased 2.3 percent to $3.6 billion. The net carrier operating income increased substantially from a $46.1 million loss in the 1982 period to a profit of $65.6 million in the first quarter of 1983. And net income rose similarly from $38.6 million net loss to a $31.6 million net income.

Now, we also have some figures which confirm this trend for the second quarter of 1983 vis-a-vis the second quarter of 1982. They are going to be released probably within a couple of days. I do not think there is any secret about it. I thought I might give them to you at this time.

Comparing the second quarter operations which, as I say, should be officially released sometime before the end of the week, operating revenues have increased 3.7 percent to about $4 billion.

The CHAIRMAN. This is second quarter?

Mr. TAYLOR. This is second quarter 1983 versus second quarter 1982. And net carrier operating income rose substantially by 80.6 percent to $219.6 million, and net income also improved significantly by 78.2 percent to $121.5 million.

We think that this increase in revenue and earnings definitely reflects a pickup in the Nation's economy and a continuation of the improvement shown in the first quarter, and we think it is going to keep going as the economy improves. I do not think there is any question about that. We predicted that, and I think now we have some evidence.

In any event, going back to my summary, at this point I would like to highlight some of the indicators that have led the Commission to conclude for the third year now that the Motor Carrier Act reforms are indeed working.

Since the effective date of the act, July 1, 1980, 18,221 new carriers have received authority from the Commission. Over 60,411 new certificates have been served during this same period. As expected, applications appear to have leveled off and are presently being filed at the rate of approximately 1,100 each month. Overall, shipper satisfaction with the level of service remains high.

Where small community service has changed—and this is the point you made earlier with the Secretary—it has generally improved. The shippers surveyed in the Commission's nationwide small community survey, 9 percent to 20 percent said more service was available now than before the act.

The CHAIRMAN. Reese, let me interrupt you, and I will let you go over your 5 minutes because I am interrupting.

Tell me in a little more detail. Give me those figures again. This was your study of the small shippers or what?

Mr. TAYLOR. We made a study, a small community study. I think we made some mention of it last year. We have not seen any changes since this study was completed. If it was not part of the record last year, as I think it was, it certainly ought to be made a part of the record this year, because this is the thing that every-

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body was concerned about—that there was not going to be service to small communities.

The CHAIRMAN. Have you found the same thing that I have found that I mentioned to Secretary Dole? I mean I travel in the small communities. I speak to Rotaries in towns of 5,000. And these are people that desperately depend upon traffic in and out. And I mean truck traffic because many of them do not have railroads. I am not getting any complaints.

Mr. TAYLOR. We are not getting any either. I, too, spent 2 days in Florida and found none. I have just come back from Wyoming. I have been to a number of small towns looking at some of the coal operations out there. I come from a state which has a number of small towns in it, as you know, and I know I would have heard complaints from the State of Nevada if they were having any problems with the small communities, so they simply are not.

The CHAIRMAN. You and I are in essence in the same business, and the rule of thumb is this: If things are going well, you do not hear anything. If things are going badly, you hear about it.

Mr. TAYLOR. You hear plenty, that is right.

Senator PRESSLER. I might say that I have gotten several complaints. I will document some of them later. So everything is not rosy. And, incidentally, when Chairman Taylor finishes his statement, then I will be ready with my opening statement.

The CHAIRMAN. Thank you.

Mr. TAYLOR. Let me go back over some of these numbers, and if we could, please, I would like to have the small community service study made a part of the record.

The CHAIRMAN. It will be placed in its entirety in the record.[1]

Mr. TAYLOR. Of the shippers surveyed in the Commission's small community survey, 9 percent to 20 percent said more service was available now than before the act. Seventy-seven percent and ninety percent said the availability of for-hire truck service was unchanged, and only 2 percent to 5 percent said less service was available now—a pretty small amount.

With respect to freight claims, 85 percent to 97 percent of those shippers surveyed indicated either that they had no claims or they had no change in their ability to resolve the claims, 3 percent to 8 percent indicated more problems, and 1 percent to 9 percent indicated fewer problems with respect to claims.

Pricing innovation and independent ratemaking have continued to increase dramatically since passage of the act. In fiscal year 1982, 180,829 independent rate actions were reported by major rate bureaus. The figure for fiscal year 1983 is 230,184, and that does include a projection for the month of September since we are not quite finished with fiscal year 1983 yet.

Although initial results indicated that the new law had little positive impact on owner-operators, recent figures suggest that increasingly they are making use of the special provisions of the Motor Carrier Act to obtain their own operating authority.

Since June 1, 1982, 249 owner-operators have been granted certificates for operating authority. That may not sound like many, but we had practically none early on. As they have learned about

[1] The material referred to has been retained in the committee files.

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availability and the easy availability of authority, they are now beginning to come in and seek it.

The Motor Carrier Act has significantly reduced the role of the Commission which has lessened the workload as a result. Authorized permanent full-time staffing levels have decreased to a projected 1,150 for fiscal year 1984. When I came I think the Carter budget had us way up around over 1,800. So we probably have taken as big a cut in that area as any agency in town. This should net considerable cost savings as well.

As discussed in more detail in the text of my statement, service levels remain good.

Complaints—you made reference to that—continue at a low level for fiscal year 1983. Complaint levels concerning motor carriers of property—and I exclude now household goods carriers—range from a high of 1,020 in March to a low of 670 in August. September appears to be the lowest month yet with only 139 complaints as of September 13.

The CHAIRMAN. Let me interrupt again. That's an extraordinary drop.

Mr. TAYLOR. I think it is fantastic.

The CHAIRMAN. Over 10,000 to less than 1,000 between March and August and clearly less than that in September if your month continues as it is going.

Mr. TAYLOR. That is exactly the point. And I think that has got to be indicative.

In fiscal year 1983 the total number of complaints against motor carriers of property declined more than 5,000 compared to the number received in fiscal year 1982. In both years they are substantially below pre-Motor Carrier Act levels.

Even more significant, however, in measuring the success of the act is the status of service to small communities, which was already mentioned, since this was the area that most people were concerned about as a result of regulatory reform.

Last December we reported to this committee that motor carrier service to small communities had not been curtailed, and that if anything, such service had improved. This conclusion was based on the report we have already mentioned mandated by section 28 of the Motor Carrier Act entitled the "Small Community Service Study," released September 1, 1982, which you have agreed to make part of the record.

We summarized this comprehensive study at last year's oversight hearing, made a copy of the report available. In addition, I have highlighted some of the data more fully in my full statement.

We have no reason to believe that these results have changed one iota. In fact, a recent study conducted by DOT supports our conclusions.

Turning to the industry's financial performance, as I mentioned earlier, there has been an improvement in the financial condition of freight carriers which we believe parallels the turnaround in the economy. This is indicated by the latest earnings data for the industry. Tonnage levels did continue to decline somewhat, but the decrease was much, much less than we had reported last year, so even that is showing improvement.

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With regard to rates, there has been greater pricing innovation and a dramatic increase in independent ratemaking since passage of the Motor Carrier Act. The number of independent actions is up, as is the number of motor carrier filings. Motor carrier filings for this fiscal year increased to 1,069,782 compared to 725,864 in fiscal year 1982. The vast majority of the filings are rate reductions. Thus, it appears that the act has had its intended effect of increasing competition and providing greater ratemaking flexibility.

The actions the Commission has taken—in particular, proceedings pursuant to the statute and the studies we have completed—are discussed in detail in my testimony, and I am not going to take the time to repeat them all here.

In conclusion, I would like to comment on legislative recommendations referred to by yourself earlier regarding motor carriers of property. We indicated at last year's hearing that the Commission would be taking a hard look at all facets of motor carrier regulation, and that we intended to work closely with the Department of Transportation, OMB, and Senate Commerce Committee staff in developing new legislative initiatives.

One of the alternatives we said we would look at was whether to recommend the termination of economic regulation of freight carriers. I would like to report that the Commission strongly favors further deregulatory legislation which would eliminate the economic regulation of freight carriers.

The CHAIRMAN. Say that again, because that is a very strong statement, and let us make sure everybody in this audience clarifies. When you talk about motor carriers of property, you are exempting, I think, only two things. One is household goods—and maybe you mean to include that—and the other is people, right?

Mr. TAYLOR. In the household goods area I think there are a few consumer-type functions that somebody is going to have to pay some attention to, and who should do that, I do not know. There is some safety and some insurance, and those are administerial functions, and they could be——

The CHAIRMAN. When you say motor carriers of property, you in essence mean all goods that are carried in this country.

Mr. TAYLOR. That is correct.

The CHAIRMAN. And you might say again what your position is.

Mr. TAYLOR. Let me say that again slowly and positively. I would like to report that the Commission—and I am talking about the Commission unanimously—strongly favors further deregulatory legislation which would eliminate the economic regulation of freight carriers. And the only thing I am talking about that in our view should be left is the safety and insurance matters that you have already made reference to, which definitely could be handled on an administerial basis by the Department of Transportation. And some attention to those consumer-type protections for household goods, shippers who do not have a NASSTRAC or a NIT League or anybody to run interference for them.

The CHAIRMAN. Has the unanimous recommendation of the Commission gone down to the White House or to OMB?

Mr. TAYLOR. I wrote a letter to the President, as I guess you know, and urged that they cut loose this legislation so that it would be considered. I think maybe the best way for me to summa-

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rize it, Mr. Chairman, is if anybody went down to the Commission today and on a cost-benefit basis did a study of what we are doing in terms of the results we are producing and what it is costing the taxpayer for us to do it, they would have to conclude without any question, I mean there is just no argument about it, that this nonsense ought to end immediately.

The only problem is we cannot legally end it administratively. We have to come to Congress to do it.

The only problem I have with your suggestion is that there is a fuse on it, and it is going to take some time. If that is the way it has to be done, fine; we are willing to go along.

The CHAIRMAN. Well, my preference would be to end it now. I think we could justify ending it now. But if in order to get a consensus you get a bill through that would end it in 2 years, I would agree to that, or 2½ years. That is not a long time in the history of civilization.

Mr. TAYLOR. I will agree with you.

The CHAIRMAN. If that is what the tradeoff has to be, I would be prepared to accept it.

Mr. TAYLOR. I think we would go along with you wholeheartedly on that, if that is the way it is best accomplished. But the fact of the matter is that right now any kind of a cost-benefit analysis, what we are doing and what it is costing the taxpayers for us to do it is absolutely ridiculous. We are engaged in the absolute sham of motor carrier regulation for regulation's sake. It is nothing more than a monumental paper shuffling operation, and the sooner it ends, the better. There is no redeeming public benefit involved. It is absolute nonsense.

The CHAIRMAN. As I said in my opening statement, there is on occasion a justification for regulation, on occasion. When you are looking at rail lines and captive shippers, you clearly have some questions as to whether or not you are going to cut loose all regulation.

When you look at household goods where people do not have a movers organization—and maybe one day they will have one—there is some justification. But when you have adults dealing with adults who have opportunities for a variety of services and prices, I am not sure they need our help.

Mr. TAYLOR. That is the whole point. Where competition can substitute for regulation, it has got to do a better job than the most brilliant regulator that was ever born. You know, there are some areas in the rail sector, without any question captive shippers, which require some serious attention. You know of some decisions we have made in that area and a couple of dissents, as a matter of fact, that I have issued because I feel very strongly that we must move very carefully in the rail area to make sure that competition is retained as we continue to deregulate the rail industry. But this is a motor carrier hearing, and there is plenty of competition in the trucking industry; and as far as I am concerned, that competition should be substituted for regulation as quickly as possible.

But to get the constituency that you seem to feel is important—and I would agree with that—if it has to be delayed a year or two, that is a long time. Whatever the program is, we are here to go along with it.

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Let me just go on now and say that the positive results, which I think we made reference to here today, certainly provide justification for further deregulation of the trucking industry. And as I already indicated, the Commission does stand ready to assist the committee and its staff when additional deregulatory legislation begins to move through the legislative process.

In the meantime, the Commission will continue its efforts to implement the Motor Carrier Act in accordance with congressional intent and the national transportation policy, and we will, of course, keep you apprised of all further developments.

This does conclude my prepared remarks, and now, Mr. Chairman, I would be pleased to respond to any questions that you might have.

The CHAIRMAN. Mr. Chairman, I have a few, but I believe Senator Pressler might have an opening statement.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. I will be very brief.

Mr. Chairman, the committee is well aware of my opposition to trucking deregulation. In a rural State like South Dakota it has had a negative impact not only on the trucking industry but also on the rural customers who have experienced a sharp decline in service since enactment of this legislation.

On my frequent trips home to South Dakota I have heard from consumers and truckers alike about the impact of this legislation. Those living in the more rural areas of the State have often told me of the noticeable decline in service since deregulation.

In the past 3 years I have watched hundreds of small trucking firms and independent operators go out of business. The trucking situation in South Dakota since deregulation has not been good—from both the standpoint of the small truckers and the consumers.

I have recently received some very insightful comments from the South Dakota Independent Truckers Association regarding the impact deregulation has had on their businesses. They raised some excellent points that I want to explore further with some of the witnesses here today.

But their overall feelings on the legislation's impact on their small operations was succinctly stated in one statement: "It has been a disaster."

Mr. Chairman, I ask to place some of their statements in the record.

That seems to be very close to the same response I get from my constituents in more remote areas of the State who have lost all or most of the past service that they enjoyed. Overall, trucking deregulation has been very harmful to my State.

With that I will end my opening remarks so we can get on with the testimony here. When I have a chance, I do have some questions.

The CHAIRMAN. I have only one question left, and, Mr. Chairman, I interrupted your testimony with some others.

But we are going to hear testimony later today from some witnesses that the ICC has not exercised its legal authority to abate

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discriminatory pricing practices, and particularly in less than truckload lots.

What is your view of the statements that they are going to make?

Mr. TAYLOR. Well, in the first place we have just released a decision which deals with the whole question of pricing practices. We took a long time doing it. I felt it was very worthwhile. One of my colleagues felt that perhaps it need not have been done in the first place, but in my view I think it was very worthwhile. I think it shows where we are coming from insofar as the present act is concerned. I think it makes it very clear that we are not going to establish a group of standards. And I think that once again, as we come out of the recession that we have been in, a lot of the talk and the clamor and the hue and cry about discriminatory and predatory pricing is going to disappear. It is already disappearing.

We claimed—and I did not really have a lot of evidence for it at the time—that it was largely a byproduct of the recession that we were in, and I think we are finding that to be true.

There is one interesting facet to it which is an issue in a proceeding that is currently before us, and I think I might just make some brief reference to that, because that does have to do with antitrust immunity and the question you have raised, and it is a NASSTRAC petition which has been filed with the Commission, and I have circulated it to my colleagues in the hopes that they will regard it favorably.

It has not been voted on yet. As a matter of fact, I think the vote date on it is today. I might just quickly read the contention that NASSTRAC has made from the petition they filed at page 7 wherein they say, "During the past 2 years the two elements necessary for collective ratemaking"—you know that NASSTRAC is interested in small shipments——

The CHAIRMAN. They are going to testify later today.

Mr. TAYLOR. So that, I think, is responsive to the particular area that you are concerned about.

"During the past 2 years the two elements necessary for collective ratemaking to be in the public interest—restraint on the part of the bureaus and the restraining hand of the Commission—have been notably absent." We really have suspended or investigated, to my knowledge, very few matters really since I have been here. And that is their point. They are very, very concerned about that because I think you have to say that antitrust immunity goes with regulation; no antitrust immunity goes either with deregulation or with no regulation. If you are going to eliminate antitrust immunity or if you are going to eliminate regulation—let us put it that way—then it seems to me antitrust immunity should go, too. I do not see how you keep one without the other.

I have a colleague who does not agree with that, but my view is that if you are going to allow everybody to sit around the sputtering candles and set the rates, then you should have some regulator there to see if what they are doing is reasonable. If you are not going to pay any attention to how those rates are set and whether or not they are fair and reasonable, then the free market ought to do it, and we have an opportunity to have the free market do it.

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In any event, let me get back to their contention. The Commission has thrown the door open, according to NASSTRAC, to any and all collectively made rate increases and rate restructures. The carriers, faced with increased competition on larger shipments and imbued with a normal or perhaps above normal desire for revenue increases, have rushed through the open door time and again to grab as much revenue as they can from their captive shippers.

Faced with this unrelenting attack by the rate bureaus, NASSTRAC and the drug and toilet people have come to the conclusion that the solution is to remove the carriers' collective ratemaking authorization over small shipments. We were just talking about those small shipments.

Now, frankly, I think it might be a pretty good idea for us to sit here and not pay any attention to the rates in terms of a suspension or investigation in practically all instances on the theory that, you know, this is deregulation; and yet, to have those rates set with antitrust immunity I think is just an absolute anomaly we should not put up with.

So my view is that at least as to just the small shipments—I know I was asked by a member of your Ratemaking Study Commission during the hearing, why doesn't the Commission just wipe out antitrust immunity across the board? I think Congress really wanted to do that. That is why they had the Study Commission.

But this is a small area involving rates on shipments under 1,000 pounds. And it seems to me that maybe there is a good possibility that maybe this is the kind of action we ought to entertain. In any event, this is just a request for rulemaking. It is not a final decision. And if we went forward with a proceeding, it would at least allow everybody the opportunity to comment on it, and we could get their views as to whether or not it is a good tradeoff.

The CHAIRMAN. I would absolutely encourage you to do it. We are going to have testimony from the small shippers later that will reiterate what they have said. The Assistant Attorney General is going to reiterate what you have said and what Secretary Dole has said.

I think there is almost a consensus coming to the conclusion that you are stating anyway, and I hope we can get there. I would like Congress to move. If we cannot, and you have the authority to at least help, I would appreciate it if you would move.

Mr. TAYLOR. Well, this is a small area where we could. And I might say—you mentioned the Department of Justice. They are in support of our doing that, and so are the NIT League and American Retailers Federation. I do not see any reason in the world why we should not at least put the thing out for comment and see where we are going with it.

So, hopefully, that is the way the Commission will vote, and we should know later today.

The CHAIRMAN. Thank you.

Senator Pressler.

Senator PRESSLER. Now, we are often told that this deregulation has reduced the cost of shipping goods. Do we have any empirical evidence available that shows that the saving has been passed on to the consumer in the form of lower prices?

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Mr. TAYLOR. Well, rates have gone down. I do not think there is any question about that. I have two good staff people here, one who is our economist, runs the economics department of the Commission, the Office of Transportation Analysis, and if he has any data to that effect, I am sure he could be persuaded to provide it at this time. And Ron Young is in charge of our Bureau of Accounts. He might be able to add something as well.

Let me ask Dr. Southard, if he would, to comment on that.

Mr. SOUTHARD. Senator, we have not done a broad-scale study to determine whether or not—it is obvious rates have been reduced—to see whether or not those have been in general passed on through to consumers.

In the small community study we looked at rates to small communities since the passage of the Motor Carrier Act, and we found on the basis of our sample that while rates to small communities had been increasing, they had been increasing at a slightly lesser rate than freight rates to the larger communities.

In the food and grocery allowance report to Congress which we completed and submitted to Congress on July 3, we found no statistical evidence that the allowances were being retained by the manufacturer or the wholesaler. And I grant that that is not rates, but it falls in that general area. Other than that we have not specifically done any large-scale analysis.

Senator PRESSLER. I think it would be useful to know if the consumers have benefited, if indeed rates are lower. And I have not been able to find any empirical evidence that consumers have benefited, and I do not know if rates are always lower.

But now the small shipper study there, how is that material obtained? What was the method of research?

Mr. SOUTHARD. For the complete service or just the rates?

Senator PRESSLER. Yes. How was that done?

Mr. SOUTHARD. We conducted a random sample of a substantial number—I have to look and see exactly how many—of small communities.

Senator PRESSLER. You sent out a questionnaire? How many responses?

Mr. SOUTHARD. We had a very high response rate, in the neighborhood of 70 to 75 percent.

Senator PRESSLER. So you had about 800 responses?

Mr. SOUTHARD. About that. I could provide that to you.

Senator PRESSLER. Did we have any from South Dakota?

Mr. SOUTHARD. I made a note when you made your opening statement to check that out. At this point I simply do not know.

Senator PRESSLER. Are the survey forms confidential, or could I look at them?

Mr. SOUTHARD. Certainly, you may look at them.

Senator PRESSLER. Good. I would be interested in seeing some.

Mr. SOUTHARD. I would just add one point, Senator. We structured the sample so that every State was included in the sample, so I would assume that there were——

Senator PRESSLER. How could you find that out this morning? Could you call someone, or could we take a look at it this afternoon? How could we find that out?

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Mr. SOUTHARD. I could find that out for you. Whether I could do it today or not—we may have put our records away, our underlying documents.

Senator PRESSLER. If my staff could take a look at those, some might be from South Dakota. I seem to be getting different information. In fact, I do not know if you are familiar with a publication called the South Dakota Independent Trucker, which is a monthly publication, but I will supply it.

Now, who did the questionnaire go to? Did it go to shippers or truckers or consumers?

Mr. SOUTHARD. To shippers, users, both shippers and receivers, shippers and receivers.

Senator PRESSLER. But it did not go to the truckers?

Mr. SOUTHARD. No, sir. We surveyed the customers.

Senator PRESSLER. You surveyed the customers.

Mr. SOUTHARD. That is right. We randomly selected the towns in a nationwide survey. Within those we randomly——

Senator PRESSLER. And what were the findings in terms of the findings even in small towns where the people liked it better? What would be the main conclusion?

Mr. SOUTHARD. The overwhelming conclusion is that nothing much has changed. And it ranged, depending on particular issues we were addressing, from 75 to up to 90 percent of the respondents saying nothing has changed. So that is my primary conclusion. But of those who responded that there had been a change, more said the change had been for the better than stated that it had been for the worse.

But the overwhelming response was that there had not been much change. And we did this survey over—we did it 6 months after the Motor Carrier Act, and then we followed up 6 months after that, and then we followed up 6 months after that. So we had the three time periods.

Senator PRESSLER. I would guess that if you sent the questionnaire to Sioux Falls and Rapid City—they are towns of 60,000 and 40,000—and they are on the interstate highway—you would probably find a favorable response.

But there are many towns of 500 to 1,500, which I hope were included in the survey.

Mr. SOUTHARD. They certainly were.

I probably should not say this, but I essentially biased the sample to make sure that my hometown of Ryan, Okla., population 901, was included. And I got a response from a dry goods dealer and he said nothing has changed.

Senator PRESSLER. You do not recall if Humboldt, S. Dak., was in your survey, do you?

Anyway, we will enjoy looking at some of those.

Mr. SOUTHARD. It is just a matter of where they are filed. We have them. We have not sent underlying data to the record center.

Senator PRESSLER. What about the financial condition of small independent truckers? Do you have any studies? What has occurred in their economic livelihood?

Mr. SOUTHARD. Director Young of the Bureau of Accounts keeps the financial data. I better defer to Ron.

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Mr. TAYLOR. We will switch over to him if we might, Senator. Let me just say that in our *Ex parte* MC-166 proceeding we have gotten a number of comments, not really from consumers as such. What shippers do with their transportation savings, we are not really in a position to track. We presume that the transportation costs are reflected in prices and that it has had some impact.

But so far as the shippers are concerned, we got a number of comments from shippers as to the fact that they have benefited from lower transportation costs as a result of the Motor Carrier Act, in our *Ex parte* No. MC-166 proceeding. I think maybe it would be worthwhile, Mr. Chairman, if we made that part of the record here.

The CHAIRMAN. Absolutely. Thank you.[1]

Mr. TAYLOR. And as far as the health and condition of small carriers are concerned, one of the problems is the extent to which we collect data across the board on all carriers. But whatever we do have, I think Director Young could comment on it. I would ask him if he would, please, at this time do so.

Mr. YOUNG. There is really not much I can say, because we do not collect any data on the small regulated carriers, and certainly none of the independent owner-operator type carriers. Clearly, those carriers were harder hit, but that was primarily, in our view, due to the recession. And as we come out of the recession, I presume that many of those or others will begin to carry traffic again.

But we do not have any data on the small carriers. It is primarily the larger carriers who are picking up as the recession winds down.

Mr. TAYLOR. I think, Senator, that is a very important point, and it has been alluded to earlier, that unfortunately we have experienced deregulation during an economic downturn. We are now coming into an upturn. And I think in fairness, really, because there are a lot of small businesses that were hurt as a result of the recession—not just small trucking companies, but small businesses of all kinds. There are a number of little small shops and businesses in my little small town of Carson City, Nev., that were adversely affected and had to close their doors. That happened all over the country.

We are coming out of that now. I think it is probably only fair to withhold any kind of final judgment on impact insofar as small truckers are concerned until we experience some better times.

We know that the overall trend is definitely up. Before you came in I read some figures into the record as to where we are now with the financial data that we do have on the trucking industry, and it is going markedly up with the economy. I would think that would happen with the small truckers, too.

Senator PRESSLER. Mr. Chairman, if we can leave open a place in the record after we review the research methods, I would like to make a comment on those. And I may have some additional questions for the record.[2]

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[1] The material referred to has been retained in the committee files.

[2] The ICC's study of service to small communities examined during a subsequent Commerce Committee hearing on oversight of the Motor Carrier Act; this hearing was conducted December 15, 1983, in Sioux Falls, S. Dak.

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Thank you very much.

Mr. TAYLOR. We would be glad to, before the end of the week. I am sure that Bill Southard can uncover whatever we have from South Dakota between now and Friday, and I will make that commitment to you, to get together with your staff and go over what we do have.

Senator PRESSLER. There are substantial problems, I want you to know, out there with the independent truckers. And of course, in addition, they have the tax, which is not part of this bill, $1,400 to $1,900 per truck, which they are also bearing. And it is tough times for a lot of them.

Mr. TAYLOR. We would like to know as much as we can about it. As you know, we have tried to cooperate in every way we can in the rail area with the abandonment situation in South Dakota. And if there are specific problems that relate to your State insofar as trucking is concerned, we will do what we can to give you a hand with it.

Senator PRESSLER. At this very hour, in fact, there is an abandonment hearing, as you know, in Phillip, S. Dak., of a Western line. So we have great transportation problems.

The CHAIRMAN. I have no further questions, Mr. Chairman. Thank you very much. We thank you and your staff for coming.

Mr. TAYLOR. We enjoyed being here.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and Members of the Committee:

I want to thank you for the opportunity to appear here today at the third annual Senate oversight hearing to present the views of the Commission with regard to the implementation and effects of the Motor Carrier Act of 1980. In addition to the statement, we have included the following attachments: (1) a list and explanation of the current status of proceedings initiated by the Commission to implement the Act; (2) a summary of significant Motor Carrier Act proceedings under judicial review; (3) studies and reports that form the basis of the Commission's monitoring efforts; (4) the latest earnings and traffic volume data for the 100 largest motor carriers of property; and (5) information on 1983 general rate increases.[3]

INTRODUCTION

At prior Motor Carrier oversight hearings, the Commission has testified that the motor carrier industry and the users of its services have responded favorably to the changes mandated by the Motor Carrier Act of 1980. I would like to strongly reaffirm that view today.

Despite the serious financial difficulties that some motor carriers were experiencing at the time of last year's hearing on December 14, 1982, we reported that the significant reforms of the Motor Carrier Act—namely, eased entry, rates flexibility, and reduced antitrust immunity-were being achieved. Clearly, the environment in the trucking industry had become more competitive. With regard to the industry's declining financial performance, the Commission noted that economic conditions, rather than regulatory reform, appeared to be the principal cause.

I am pleased to report that the latest figures indicate that the motor carriers' financial picture has improved. As we predicted, the carriers' earnings are improving along with the general recovery in the economy.

At this point, I would like to highlight some of the indicators that have led the Commission to conclude, for the third year, that the Motor Carrier Act reforms are indeed working.

[3] Designated Appendix I, II, III, IV and V, respectively. (Retained in committee files.)

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Since the effective date of the Act, July 1, 1980, 18,221 new carriers have received authority from the Commission. This marks an increase of 4,415 over the figures reported to this Committee last December. More than 3,806 grants of authority have been issued to new carriers in just the last six months.

The total number of new certificates served since the Act went into effect is 60,411. There was an increase of approximately 10,685 new certificates since the last Senate hearing.

As expected, applications appear to have leveled off. As of June of this year, applications were being filed at a rate of approximately 1,100 each month. They are holding steady at about that rate.

Overall, shipper satisfaction with the level of service remains high.

Where small community service has changed, it has generally improved. Of the shippers surveyed in the Commission's nationwide small community survey, 9 to 20 percent said more service was available now than before the Act, 77 to 90 percent said the availability of for-hire truck service was unchanged, and only 2 to 5 percent said less service was available now. With respect to freight claims, 85 to 97 percent of those shippers surveyed indicated either that they had no claims or that there had been no change in their ability to resolve the claims. Three percent to 8 percent indicated more problems and 1 to 9 percent indicated fewer problems with respect to claims. Similar results have been reported in a recent DOT study.

Pricing innovation and independent ratemaking have continued to increase dramatically since passage of the Act. In fiscal year 1982, 180,829 independent rate actions were reported by major rate bureaus. The figure for fiscal year 1983 is 230,184.[4]

Although initial results indicated that the new law had little positive impact on owner-operators, recent figures suggest that, increasingly, they are making use of the special provisions of the Motor Carrier Act to obtain their own operating authority. Since June 1, 1982, 249 owner-operators have been granted certificates for operating authority.

The Motor Carrier Act has significantly reduced the role of the Commission which has lessened the workload. As a result, authorized permanent full-time staffing levels have decreased to a projected 1,150 for fiscal year 1984. This should net considerable cost savings.

In response to the revised National Transportation Policy, a program has been initiated to promote greater minority participation in the motor carrier industry. A list was developed of existing minority carriers and a monitoring program put in place. In addition, at last year's oversight hearing, we reported on a series of hearings which the Commission held to find out whether minority carriers encounter any special problems in entering the industry. The results of the Commission's efforts in this area were made available to the Subcommittee in a report entitled, Ex Parte No. 150 (Sub-No. 1), "Report on Minority Participation in the surface Transportation Industry." A more recent report, just released, appears in Appendix III. It contains an updated list of minority-and female-owned motor carriers holding interstate operating authority and the latest results from our monitoring efforts.

SERVICE

Based on three years of available data on implementation, the pre-Motor Carrier Act predictions of strengthened competition among carriers, resulting in lower rates and increased price/service options for shippers, have come true.

Our experience indicates that the levels of service remain good. Complaints continue at a low level. For fiscal year 1983, complaint levels concerning motor carriers of property ranged from a high of 1,020 in March to a low of 670 in August. September appears to be the lowest month yet, with only 139 complaints as of September 13. This is substantially below the pre-Motor Carrier Act levels. In fiscal year 1983, the total number of complaints against motor carriers of property declined more than 5,000, compared to the number received in fiscal year 1982.

Even more significant, however, in measuring the success of the Act, is the status of service to small communities, since this was the area that most people were concerned would suffer from regulatory reform.

SMALL COMMUNITIES

Last December, we reported to this Committee that motor carrier service to small communities had not been curtailed as expected, if anything, had improved. This

[4] References to fiscal year 1983 data in this statement include projected figures for September.

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conclusion was based on a report, mandated by section 28 of the Motor Carrier Act, entitled the "Small Community Service Study," released September 1, 1982.

We summarized this comprehensive study at last year's oversight hearing and made a copy of the report available to you at that time. In addition, I have highlighted some of the data earlier in today's statement. We have no reason to believe that these results have changed and, in fact, a recent study conducted by DOT supports our conclusions.

The Commission believes it is important to note that the results of this study are remarkably consistent. While regulatory reform has caused no dramatic changes in small community rates or service, changes that did occur were generally favorable. In the vast majority of cases, shippers reported very little change in quality of service as measured by on-time performance, loss and damage claims and availability. In addition, where changes did occur, improvement in service was reported much more often than service deterioration. Complaints about trucking service in small communities have decreased significantly since passage of the MCA. Finally, an examination of rates indicates that rates to and from small communities have increased less rapidly than rates to or from larger cities.

It is the conclusion of the study that the pre-Motor Carrier Act fears that carriers would abandon service to small communities have not materialized. In fact, the evidence suggests that small communities have actually benefited from this legislation.

SIGNIFICANT CHANGES DURING THE THIRD YEAR OF IMPLEMENTATION OF THE MOTOR CARRIER ACT

The third year of experience with the Motor Carrier Act was marked by a continuation in the trend toward an increased number of contract carrier applications, particularly in regard to the percent of applications filed by first-time applicants. This is in contrast to the dramatic increase during the first year in the overall number of applications for common carrier authority, a phenomenon which was primarily due to the initial surge by existing carriers to expand their authority under the new liberalized entry standards.

The following table illustrates these changes:

	Percent of all applications (rounded)		
	July 1980–June 1981	July 1981–Oct. 15, 1982	Oct. 16, 1982–Aug. 31, 1983
Dispositions:			
All applications for contract carrier authority	16	28	25
New carrier applications for contract authority	3	10	9
New carrier applications for all types of authority	11	40	46

The trend of general commodity common carriers initiating special commodity operations has continued. It appears that the movement toward private carrier operations has slowed. There have been 937 notifications of intent to engage in private intercorporate hauling filed since July 1980, but only 61 of those have been filed since December 1, 1982. Shippers are turning increasingly to contract carriage and common carriage as rates and service become more competitive.

Carriers continue to file tariffs combining discount rates with guaranteed service. A delivery sufficiently late can result in a discount of as much as 40 percent below regular rates.

The number of independent rate actions taken in bureau tariffs provides additional evidence of increased competition. For ten major rate bureaus, the number increased by 31 percent during fiscal year 1983 as compared to fiscal year 1982–1980—from 180,829 to 230,184.

Shippers are benefiting by the increase in competition which has reduced rates and improved service. Many shippers are placing greater emphasis on a total distribution and logistics approach whereby they strive to optimize the balance between level of customer service and cost of service, and for any chosen service objective, to minimize the total costs for production and distribution. The number of opportunities to achieve these goals has multiplied as carriers compete with a variety of price-service options.

The Commission has also sought to increase the trend toward intermodalism by its actions in such cases as Ex Parte No. MC-156, "Motor Carrier Operating Authority—Railroads," in which we eliminated the "special circumstances" doctrine, which restricted grants of authority by railroad affiliated motor carriers to performance of

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service auxiliary or incidental to a rail movement, unless special circumstances justified the issuance of unrestricted authority. In addition, in Ex Parte No. 438 (served August 17, 1983) the Commission is proposing to modify its policy regarding the acquisition of trucking companies by railroads. Comments are due in early October.

FINANCIAL CONDITION OF MOTOR CARRIER INDUSTRY

As I mentioned in the introduction to my statement, there has been an improvement in the motor carriers' financial performance, which parallels the turnaround in the economy. This is indicated by the latest earnings data for the industry. Tonnage levels did continue to decline, but the decrease was much less than we reported last year.

A. Latest earnings data

The most recent data released by the I.C.C.'s Bureau of Accounts indicates increased revenues and substantially improved earnings for the nation's largest trucking companies in the first quarter of 1983, as compared with the same period during the previous year. The report, contained in Appendix IV, compares the earnings of the 100 largest motor carriers of property (excluding two United Parcel Service carriers) for the quarter and twelve months ending March 31, 1983, with the corresponding periods in 1982.

A comparison of the first quarter operations shows that:

Operating revenues increased 2.3 percent to $3.6 billion.

Net carrier operating income increased substantially, from a 46.1 million loss in the 1982 period to a profit of $65.6 million in the first quarter of 1983.

Net income rose similarly, from a $38.6 million net loss to a $31.6 million net income.

Revenue tons hauled decreased 4.5 percent.

Of these 100 carriers, 56 reported increases in operating revenues, 72 reported improved net carrier operation income, 69 reported improved net income, and 41 reported increases in tonnage hauled.

A comparison of results for the 12-month period reveals that:

Operating revenues fell 2.6 percent to $15.3 billion, as revenue tons hauled declined 8.9 percent.

Net carrier operating income decreased 18.6 percent to $324 million.

Net income declined 30.3 percent to $158.9 million.

Operating ratio (ratio of operating expenses to operating revenues) increased to 97.9 percent from 97.5 percent.

Rate of return on shareholder's equity declined to 5.47 percent from 7.70 percent.

The improvement in earnings in the first quarter of 1983 represents the first year-to-year quarterly increase in earnings for the 100 largest trucking companies since the second quarter of 1981. A preliminary review of the second quarter data reveals a continuation of the upward trend. Revenues and earnings in the second quarter of 1983 increased compared to the second quarter of 1982, with net carrier operating income and net income both rising substantially.

B. Recent bankruptcies and cessation of operations by motor carriers

Since the Commission has legal jurisdiction over some aspects of railroad bankruptcies, we are officially notified of any bankruptcy filings by railroads. However, motor carriers are not required to formally notify the Commission when they file for bankruptcy or cease operations. Consequently, we do not have a definitive or an all-inclusive list of motor carrier bankruptcies, many of which involve small companies.

The following is a list of large motor carriers which have recently either filed for bankruptcy or have ceased operations:

	Latest available annual revenues
Briggs Transportation—filed for bankruptcy February 2, 1983	$65,794
Midwest Emery Freight—filed for bankruptcy January 1, 1983	115,795
Gordons Transports, Inc.—filed for bankruptcy February 2, 1983	95,370
IML Freight, Inc.—filed for bankruptcy July 7, 1983	133,113
Maislin—filed for bankruptcy July 7, 1983	195,700

RATES

Since passage of the Motor Carrier Act, there has been greater pricing innovation and a dramatic increase in independent ratemaking. As indicated earlier in my testimony, the number of independent rate filings increased by 31 percent compared to

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fiscal year 1982, rising to 230,184 in fiscal year 1983. Total motor carrier filings have also increased substantially: from 427,043 in fiscal year 1980; to 512,184 in fiscal year 1981; to 725,864 in fiscal year 1982; to 1,069,782 in fiscal year 1983.

The vast majority of the filings are rate reductions. Volume discounts, multiple shipment discounts, shipper allowances, and aggregate tender discounts are among the new price options being offered by carriers. For a description of some of these discounts, see Staff Report No. 9, "Highlights of Activity in the Property Motor Carrier Industry, July 1983," contained in Appendix III. It is clear that the Act has had a very substantial pro-competitive impact.

We came to this conclusion in our investigation of allegations of predatory and discriminatory pricing in Ex Parte No. MC-166, "Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980." After reviewing the comments filed in that proceeding, the Commission in its report, served September 13, 1983, reaffirmed its earlier decisions in "Lawfulness of Volume Discount Rates By Motor Common Carriers of Property, 365 I.C.C. 711 (1982), and No. 38872, Petition for Declaratory Order—ATA—Lawfulness of Discount Rates," (not printed) served October 1, 1982. These earlier decisions and the recent report affirmed long-established Commission principles and the use of a case-by-case approach and existing standards to determine the lawfulness of motor carrier prices and practices. It was indicated that primary reliance would be placed on ex post remedies, should anticompetitive behavior be proven. The Commission determined that the new pricing practices have greatly benefited the shipping public and have led to increased carrier efficiency and heightened marketing sensitivity. With regard to restrictions on innovative and reduced rates, the Commission found that they are unnecessary and would have a chilling effect on legitimate competition.

The deciding factors were:

(1) The inherently competitive nature of the trucking industry (the trucking industry does not have the structural characteristics necessary for destructive competition to take place);

(2) The benefits to the public and increased efficiency in the industry from discount pricing;

(3) The advantages of the case-by-case approach in determining the lawfulness of single-firm conduct which involves a variety of factors;

(4) The increase in marketing programs tailored to specific customer needs; and

(5) The increasing intermodal trend.

With regard to the collective ratemaking process, our final decision in Ex Parte No. 297 (Sub-No. 5), which established new requirements and standards for motor rate bureaus as a condition to continued antitrust immunity, has now been in effect for a little over two years. Since our decision became effective, the bureaus have been adjusting to the new ratemaking environment with limitations on single-line voting; limitations on discussion and bureau control over whether and when independent action, zone, or released rate proposals should be docketed; higher quorums; item-specific proxies; detailed minutes of all meetings where tariff items are discussed; and advisory and confidentiality restrictions on rate bureau staff. The bureaus have submitted revised agreements to conform to the Motor Carrier Act and our decision in Ex Parte No. 297 (Sub-No. 5), and those agreements are now being analyzed.

In addition, the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Conference, Inc. have recently petitioned the Commission for the withdrawal of antitrust immunity for collective ratemaking by motor carriers of property for rates on shipments under 1,000 pounds. The proposed elimination of antitrust immunity for rates on these small shipments is supported by the National Industrial Transportation League and the Department of Justice. According to the petition, continued antitrust immunity for collective ratemaking on these shipments is inconsistent with the transportation policy. Specifically, petitioners contend that there is little effective competition for shipments below 1,000 pounds and that, under these conditions, collective ratemaking results in the imposition of unreasonable rates, allowing bureau members to derive the major portion of their profits from revenues on small shipments.

Meanwhile, the Motor Carrier Ratemaking Study Commission issued its report on "Collective Ratemaking in the Trucking Industry" on June 1, 1983. The Study Commission recommended complete elimination of antitrust immunity for collective ratemaking for all rates, for freight classification, and for related activities in the motor carrier industry. The suggested date when all collective ratemaking activities would be fully subject to the antitrust laws is July 1, 1984, the statutory date for expiration of antitrust immunity for single-line collective ratemaking. I should add that the Commission monitors rate bureau activities on a regular basis.

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The rate bureaus continue to process and file general increases, subject to the act's limitation of discussion to industry average costs. Appendix V contains information on general rate increases and rate restructurings for fiscal year 1983.

In evaluating these collective rate proposals, it should be stressed that the percentage increases shown overstate the actual increase in rates, because of the number of independent filings which reflect rate reductions from the authorized rate levels.

OWNER OPERATORS AND THE MOTOR CARRIER ACT

The Motor Carrier Act of 1980 included a series of provisions designed either directly or indirectly to assist owner-operators.

One provision of the Act designed to aid owner-operators enables them to haul previously-regulated food or edible products (excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, or agricultural fertilizers with their own ICC certificate rather than under a lease agreement, based on a "fitness test". This provision was designed to make it easier for owner-operators hauling exempt commodities from agricultural areas to find backhauls. Since June of 1982, approximately 249 owner-operators have received authority under this provision.

In an effort to expand the opportunities for owner-operators to obtain agricultural backhaul traffic, Congress also expanded the list of exempt commodities to include livestock feed, poultry feed or seeds, and plants—items previously subject to ICC regulation. It was believed that owner-operators would have a greater opportunity to obtain such traffic and receive additional revenues.

As we reported last year, the specific provisions in the Act designed to directly assist owner-operators, particularly the single unit fleet owner, have had little impact on the vast majority of owner-operators, with the exception of the recent trend noted above. This still remains true.

The Commission has spent considerable time and resources to inform owner-operators about the provisions of the Motor Carrier Act of 1980 and to assist them in obtaining authority. In conjunction with the Small Business Administration and the Department of Transportation, the Commission conducted 15 two-day training conferences for owner-operators across the nation in 1981. In addition to the on-site presentation, a 180-page manual was made available for each conference participant. The manual was designed to act as a permanent reference guide for owner-operators to secure information on economic regulations that relate to their businesses. Based on the success of the first year of the educational conferences, the Commission held 24 similar conferences in 1982. This fiscal year there have been 18 conferences held. The Commission strongly supports these efforts, and will continue participating in this effort. The conferences were well attended by owner-operators and were beneficial in eliminating the misconceptions about entry into the motor carrier industry.

The Commission's Small Business Assistance Office [SBAO] has been the agency focal point for providing practical information and advice to owner-operators on resolving their daily problems. The SBAO has also prepared a series of simplified informational bulletins on specific topics to further assist owner-operators and others in understanding how to conduct operations as a regulated trucker.

The Commission has continued to address other specific owner-operator problems to facilitate their operation a leased operators or as certificated carriers. In a recent notice served August 29, 1983, the Commission has proposed the elimination of the requirement that equipment be leased for a minimum duration of 30 days when operated by its owner. This proposal will enable owner-operators to secure short term traffic when the lessee is unable to provide a load in a timely manner and should generate considerable income. Comments in Ex Parte No. MC-43 (Sub-No. 15), "Elimination of Thirty Day Leasing Requirement," are due on September 29, 1983.

COMMENTS ON REPORTS AND PARTICULAR SECTIONS OF THE ACT

Restriction removal

Applications by motor common and contract carriers to remove unnecessary restrictions from operating authority under 49 U.S.C. 10922(h) have fallen off dramatically. The restriction removal procedures allow for the broadening of a carrier's authority by enlarging the categories of property authorized to be transported and the territory that may be served. Such broadened authorities allow for intermediate point, round-trip, and county-wide minimum service. The procedures also permit elimination of other limitations which the Commission finds wasteful of fuel, inefficient, or contrary to the public interest.

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Since the inception of the program, in January 1981, almost 5,464 applications for broadened authority have been filed. Approximately 164 applications have been received since December 12, 1982. This follows the general decline in all motor carrier applications for authority. Virtually all of the applications published in the Federal Register have been approved. A few were modified slightly after consideration of comments which were submitted in individual cases.

Food and grocery products transportation

Section 8(b) of the Act requires the Commission to monitor the extent to which cost savings accruing to customers by reason of compensation permitted by section 8(a) [5] are being passed on to the ultimate consumer. The third annual report to Congress was submitted on July 1, 1983, as required by section 8(b). (For a copy of the report, see Appendix III.) In the first year, as a result of lack of activity, we were unable either to quantify the magnitude of savings from customer pick-up activity or to assess the degree to which such savings might be passed on. For the last two years, however, with the assistance of consultants familar with the wholesale and retail grocery industries and our own grocery industry contacts, we were able to abtain limited but reliable data. The conclusions reached in the report are as follows:

(1) The passage of section 8 and other related sections of the Motor Carrier Act of 1980 resulted in a small but significant increase in customer pickup during 1981 as compared with 1980, and a rather substantial increase during 1982.

(2) There is no indication of any measurable failure to pass Section 8 savings through to the customers as required by the Act.

(3) No evidence of significant difficulties, abuses, or patterns of discrimination against small wholesalers or retailers as a result of Section 8 were uncovered.

(4) While the net cost savings from Section 8 are difficult to measure, it seems that such savings are increasing.

The report estimates that approximately $165 million more was paid in customer pickup allowance in 1982 than in 1979. This represents an increase of $55 million from our estimate of 109 million in 1981. In order to determine the estimated level of customer pickup allowances resulting from Section 8, that figure would have to be reduced by several factors, including the effects of inflation and expansion of in-house motor carrier operations not related to Section 8, such as intercorporate hauling. All of these factors further reduce the estimated level of customer pickup allowances resulting from Section 8. In addition, from this level must be subtracted the cost associated with customer pickup, the estimates which, according to interviewes willing to "venture a guess," ranged from 10 to 80 percent of allowances. Thus, a reasonable estimate of total net annual Section 8 related savings would be less than the $165 million estimated increase in pickup allowances since 1979.

These actual and potential savings, while falling short of the $300 million in 1975 dollars originally estimated by proponents of the provision, are indeed significant to many of the individual firms taking advantage of the opportunities created by Section 8 to remain competitive in this low margin industry.

For example, "Progressive Grocer" reported that during the nine months Borden was testing its backhaul program in 1982, almost one-quarter of a million dollars in backhaul revenue was passed on to Borden customers, with one west state retailer receiving in excess of $24,000 in backhaul allowances during that time. The Associated Wholesale Grocers, Inc. reports a backhaul income of $6 million annually since passage of the Motor Carrier Act of 1980, which is used to reduce costs to stores "Warehousing and Transportation," April 1983). Also noted in the same article was an increase in backhaul activity by the Certified Grocers of California, a wholesaler, whose backhaul/pickup of inbound dry grocery products increased from 13 percent in 1965 to 51 percent in 1982.

As greater numbers of firms take advantage of the opportunities now available to them, Section 8 savings should continue to increase. In, addition, we note that the level of discussion of the backhaul issue in trade journals decreased this year compared to last. This reflects the fact that Section 8 discounts have become an accepted business practice that is no longer unusual or controversial.

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[5] Section 8(a) of the Motor Carrier Act of 1980 permits sellers of food and grocery products who sell under a uniform zone delivered price system to reduce the price of their products by an amount that does not exceed the actual transportation cost savings to the seller if the purchaser picks up the products.

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Ex Parte No. 410 and lumping enforcement efforts

The Motor Carrier Act of 1980 requires the Commission to study and report to Congress on the loading and unloading practices of motor carriers of property. The requirement is found in section 15, the "lumping" provision of the Motor Carrier Act. The study conducted by the Commission in Ex Parte No. 410, decided February 23, 1982, concluded that loading and unloading problems are the exception and not the rule.

The vast majority of loading and unloading problems that do exist are particularly concentrated in the unloading of perishable commodities. In these situations, section 15 frequently is not the only law violated. Tax, labor, antitrust, and extortion violations may be involved as well. The use of casual laborers, or lumpers as they are called, is largely confined to truckload service; in particular, to meats, processed foods and exempt produce.

Unloading abuses are never precisely the same from one problem area to the next. As is widely recognized, unloading problems occur most frequently in the delivery of fresh produce. Produce is typically delivered to two types of facilities—wholesale markets and chain store distribution centers. A typical facility may receive as many as 35 to 40 loads of exempt fresh produce daily.

In the past these facilities may have declared openly that drivers must accept and pay for unloading assistance, many in the belief that their cost of the produce and the transportation also includes unloading. While such a policy would now be in violation of section 15 unless the drivers were reimbursed by the facility, there still appear to be facilities where this policy prevails. However, a facility that desires the use of unloading assistance will now be more circumspect, using delay, exhorbitant equipment rental fees of other artifices to impose their wishes.

Several conclusions can be drawn from an analysis of the problem markets described in Ex Parte No. 410.

(1) Unloading rather than loading is the problem area.

(2) The driver's resources have been expended; he must unload to recover his costs and, in the case of perishables, must unload quickly.

(3) It is not the payment of a charge for legitimate service that is the economic harm. Harm arises out of inflated charges and fees for illusory services.

(4) The power to charge in excess of the services provided often requires the cooperation or connivance of the receiving facility.

(5) Since the tactics of extortion may be easily disguised, clear cut violations of section 15 may be hard to demonstrate.

Since January 1, 1981, the Commission's field offices have assigned approximately 118 cases for investigation of possible lumping violations, 75 of which have been closed due to lack of sufficient documentation. One case was successfully pursued as an injunction and civil penalty case. Forty-two cases are still pending in the litigative or investigative stage.

Last year, we reported that the Commission targeted 167 facilities as potential areas of lumper abuse. This program has now been discontinued, as it did not provide the kind of information needed to prosecute.

Instead, the field staff now handles lumper matters as they are brought to the attention of the Regional Offices. This could be as a result of complaints or through our "Driver Outreach Program," which involves road checks and visits to the larger truck stops located throughout the Nation to interview road drivers regarding their various problems, including lumping. All lumper complaints, oral or written, are afforded the highest priority and attention.

During fiscal year 1983, the Regional Offices, while involved in these "Driver Outreach Programs" conducted 9,545 interviews with road drivers as compared to 3,000 at the time of our last report to Congress. All 6 regions are handling the lumper problem as situations occur in their respective territories. The most activity during fiscal year 1983 was in the New England, East Coast and Gulf Coast regions, which involved checking 46 target areas and 20 shipper facilities.

Written contracts of haul

Section 16 of the Motor Carrier Act instructed the Commission, in cooperation with the Secretary of Agriculture, to require, where appropriate, the use of written contracts governing the for-hire motor transportation of interstate or foreign shipments of agricultural commodities otherwise exempt from regulation under 49 U.S.C. 10526(a)(6).

A final report of our findings with respect to this section was transmitted to Congress on March 24, 1982, and a copy of the report was also given to this Committee at last year's oversight hearing.

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The Commission and USDA concluded that, while problems remain in the transportation of exempt agricultural commodities, there are strong indications that the imposition of a standardized written contract could create serious difficulties for the fresh fruit and vegetable industry without any assurance of overcoming the truckers' problems. Indeed, we found reason to believe that the use of a contract could result in diminishing the participation of independent truckers in this traffic, contrary to the intent of the Motor Carrier Act of 1980 to increase the opportunities available for these independents. We believed that other means of addressing these problems should be stressed. Consequently, we strengthened our commitment of enforcement resources in this area, and continue to pursue owner-operator abuse cases vigorously including prosecuting illegal lumping, violations of the leasing regulations, skimming and other practices which affect the transportation of fresh fruits and vegetables or any other agricultural commodities otherwise exempt from regulation under 49 U.S.C. 10526(a)(6).

Section 19 of the Motor Carrier Act of 1980

Section 19 of the Motor Carrier Act directs the Secretary of Transportation and the ICC to study the system of state regulations imposed upon interstate motor carriers and to prepare recommendations for Congress. State requirements range from a simple vehicle registration fee to a complex set of registration and tax requirements. The Department and the Commission divided the study workload according to each agency's expertise with the subject matter. The Commission was responsible for preparing recommendations for Public Law 89-170 (Federal law governing state public utility commission requirements for registration of interstate operating authorities) and intrastate economic regulation. Two series of public meetings were conducted and several interim reports have been published during the past 2 years.

The report has been submitted to Congress. It reaches the conclusion that, while the states have made progress toward more uniform requirements, movement has been slow. Programs proposed by groups of state administrators have been accepted by some jurisdictions, but rejections or modifications by others have stymied the progress of nationwide uniformity. The report evaluates the available options and makes specific recommendations. A copy of the Executive Summary was included in last year's testimony.

Temporary authority and emergency temporary authority

Since February 4, 1980, decisions on applications for both temporary and emergency temporary authority have been handled by six regional motor carrier boards, comprised of three members each. The transfer predates passage of the Motor Carrier Act of 1980, which for the first time added specific statutory language with regard to emergency authority applications and established time limits within which the Commission must decide applications for both temporary and emergency temporary authority.

During fiscal year 1983, the six regional boards processed 4,304 TA applications and 2,930 ETA applications. During fiscal year 1983, the boards disposed of a total of 7,234 applications for temporary and emergency temporary authority, a substantial decline from the prior fiscal year figure of 10,753.

There are several reasons for the decline in the number of filings for temporary and emergency temporary authority. First, a large number of carriers, who in the past, where frequent applicants have, since passage of the Motor Carrier Act, received grants of nationwide permanent authority, thus eliminating the need for temporary authority. Second, the faster processing time for permanent authority applications has also reduced the need for temporary authority. Finally, the state of the economy in the early part of fiscal year 1983 had an impact upon the number of temporary applications filed.

The regions have been able to decide temporary authority applications well within the time limits prescribed by the Motor Carrier Act. The Act specified that TA's were to be decided within 90 days of filing, and ETA's within 15 days. For the first six months of fiscal year 1983, TA's were decided on an average of 33.3 days after filing, and ETA's 3.7 days after filing. These figures have remained relatively constant since transfer of the function to the field.

Fuel reimbursement program

On May 24, 1983, the United States Court of Appeals for the Fifth Circuit determined that the Commission does not have jurisdiction to require motor carriers to reimburse owner-operators for increased fuel costs. In accordance with the court's mandate, the Commission terminated the motor carrier fuel surcharge program on July 23, 1983. The Commission continues to monitor the price of fuel, however, and

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makes the information public to assist those carriers which are continuing reimbursement to owner-operators on a voluntary basis.

AGRICULTURAL COOPERATIVE EXEMPTION

Section 24 of the Motor Carrier Act of 1980 raised the tonnage limit on nonfarm, nonmember regulated commodities which agricultural cooperatives could haul from 15 to 25 percent of a cooperative's annual tonnage; however, this provision has had little effect on the number of filings made by agricultural cooperatives to haul nonfarm, nonmember traffic. With the increased percentage and the concern about sham cooperatives, Congress also provided the Commission with enhanced enforcement powers over agricultural cooperatives hauling nonmember freight.

The provisions of the Motor Carrier Act of 1980 had little effect on the number of filings made by agricultural cooperatives to haul nonfarm, nonmember traffic or on enforcement actions involving unauthorized transportation by agricultural cooperatives. Both continue to occur at a normal rate.

The Commission continues vigorously to reform and minimize the regulations of motor carriers in accordance with Congressional intent and the National Transportation Policy.

While additional administrative actions are available to the Commission, the Commission strongly favors further legislation which would eliminate economic regulation of motor carriers of property.

This concludes the Commission's remarks on the implementation of the Motor Carrier Act of 1980.

I will be pleased to answer any questions you may have.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

Question 1. You testified that if the motor carrier industry were to be totally deregulated there are a few consumer protection functions related to household goods transportation to which attention must be given. Please describe these consumer protection functions.

Answer. The Commission's household goods carrier regulations are contained in 49 C.F.R. § 1056 (1982). The current regulations are a result of a comprehensive revision of the rules undertaken to implement the Household Goods Act of 1980 in Ex Parte No. MC-9 (Sub-No. 36), *Practices of Motor Carriers of Household Goods' Revision of Operational Regulations,* 132 M.C.C. 599, 46 Fed. Reg. 16200 (1981.) They have been in effect in their present form since February 1, 1982. All are directed to providing consumer protection.

The moving industry has petitioned the Commission to reopen its rulemaking proceeding in Ex Parte No. MC-19 (Sub-No. 36) for a complete review and revision of the regulations. An Advance Notice of Proposed Rulemaking will be issued shortly.

In view of the pendency of this matter, in which consideration will be given by the Commission to revising all of the present consumer functions, I believe it would be premature for me to express my own views as to which specific rules are so important that they should continue to apply if the motor carrier industry were to be totally deregulated.

I would note, however, that our current regulations are primarily directed to areas where the Commission has traditionally received the majority of the household goods complaints.

These areas involve: (1) the need for both accuracy and certainty as to charges; (2) the provision of pick up and delivery as promised; and (3) the handling of loss and damage claims. Since consumers of household goods transportation generally have little experience as shippers and lack the bargaining power to deal effectively with carriers, there may well be a need for retention of some functions in these areas. Consumer-oriented regulations can also provide household goods carriers with wide-ranging pricing flexibility; the opportunity to make only the service promises that a carrier believes it can keep; and the discretion to settle liability claims issues, subject only to civil court review when sought by the consumer, or alternative arbitration procedures where both the consumer and carrier agree on arbitration.

Question. 2. In deciding on an application for motor carrier operating authority, does the Commission conduct formal investigations as to a carrier's fitness, even in the absence of protests? If so, under what conditions?

Answer. The Commission has the authority to conduct formal investigations as to a carrier's fitness, even in the absence of protests. However, it has exercised this

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power only on very rare occasions. In those instances, the Commission's Office of Compliance and Consumer Assistance (OCCA) petitions the Commission to open an investigation proceeding on the issue of fitness and further requests that it be directed to participate for the purpose of developing the record. The latter procedure can be used where there are no protesting parties or in cases where protestants may lack the resources or inclination to introduce evidence on the question of fitness.

The procedure is set forth at 49 CFR § 1067.4. Under this regulation, OCCA advises the Commission of information which it may have obtained from various sources (e.g., complaints, compliance surveys, etc.) bearing on the question of fitness. The Commission considers the information and determines whether the facts presented in the petition rise to a level of gravity warranting a fitness investigation. When the Commission determines that the facts presented by OCCA raise sufficient questions regarding the applicant's fitness or qualifications, or its willingness and ability to conduct regulated operations in conformity with the law, a formal investigation is instituted in connection with a pending case involving that applicant. Usually the matter is then set for oral hearing before an Administrative Law Judge, and the applicant is afforded an opportunity to challenge the allegations. In some instances, the matter is handled under modified procedure, in which case the parties submit their evidence in the form of verified statements.

Question 3. What is the ICC's general course of action when it discovers that a carrier is engaging in unauthorized transportation?

Answer. The ICC's general course of action is to warn the carrier that it is violating the law and to provide the carrier with sufficient information and assistance to enable it to come into compliance. Where the carrier has been previously warned regarding unauthorized transportation and continues to operate illegally, a negotiated consent agreement is sought. In the event the carrier declines to enter into a consent agreement to abide by the law in the future or if it violates an existing consent agreement, the ICC seeks an injunction in court. Once the carrier is enjoined, if any further violations occur, the ICC asks the court to hold the carrier in contempt and impose appropriate sanctions.

In those instances where the carrier has realized substantial profits through extensive unauthorized transportation, an effort is made to divest the carrier of some of its profits through the use of civil penalites. Only in rare instances, such as where the carrier fraudulently uses another carrier's authority without permission, are criminal sanctions considered.

Question 4. To what extent does the ICC examine the level of insurance premiums paid by motor carriers, and for what reason does the Commission take any such action?

Answer. The ICC does not examine the level of insurance premiums paid by the motor carriers.

Premium rates often depend on a number of factors, such as the motor carrier's size and its loss and damage record, and generally the levels are subject to some state regulation. The Commission, however, has no statutuory authority to regulate the level of insurance premiums and, consequently, no reason to examine them.

The Commission's examination is directed solely to the requirement that appropriate evidence of security be filed with the Commission and continuously maintained. The level of insurance that is required for public liability is set by statute, subject to lower coverage limits set by the Department of Transportation. Other insurance coverage limits are set by the Commission.

The CHAIRMAN. Next we will hear from Hon. William F. Baxter, Assistant Attorney General for Antitrust in the Department of Justice. It is good to have you with us again.

STATEMENT OF WILLIAM F. BAXTER, ASSISTANT ATTORNEY GENERAL FOR ANTITRUST, U.S. DEPARTMENT OF JUSTICE

Mr. BAXTER. Thank you, Mr. Chairman. We are very appreciative of this opportunity to be here with you in these oversight hearings on the Motor Carrier Act of 1980.

In that year, Congress took a very important first step in moving the trucking industry from one ruled by Federal regulation to one that shares in a free market economy. And I am happy today to provide the views of the Department of Justice on developments

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under that act, and to urge Congress to take a second important step in reforming the trucking industry.

We believe that the Congress should promptly implement the Motor Carrier Ratemaking Study Commission's recommendations that antitrust immunity for collective ratemaking be eliminated.

In the long and unhappy history between 1937 and 1980, we had a motor carrier industry that was burdened by a welter of Government and industry regulation. Federal regulations strictly limited entry and enforced a wide system of industry cartels, sometimes referred to as rate bureaus, which established trucking rates. The results were highly inefficient, costly to shippers and consumers, and were perceived to be so by the Congress in 1980.

The 1980 act struck at some but not all of the structural features of this arrangement. It freed up entry, encouraged carriers to file independent rates, and eliminated antitrust immunity for the establishment of single-line rates.

Certain major portions of the structure were left standing, however. The ICC continues to have totally unnecessary authority to engage in rate regulation and antitrust immunity continues and will continue even after July 1984 for general rate increases, freight classifications, and "changes in tariff structures limited to industry average carrier costs."

I put that phrase in quotations, Mr. Chairman, because I have not the faintest idea what it means. Depending on how it was interpreted, loosely or broadly, it could virtually undermine much of the progress that was made in 1980. Needless to say, we think it should be interpreted quite narrowly.

In any event, events since the establishment of the 1980 halfway house have continued to deprive consumers of the full benefits of a competitive trucking industry. There has been a great deal of entry. I do not mean to suggest for a minute that the 1980 act accomplished nothing at all. We have seen a great deal of entry. We have seen a great deal of discounting.

But nevertheless, the performance of the industry indicates that it still is not functioning in a competitive way, and indeed, one would not expect it to function in a competitive way so long as rate bureaus can cartelize the rate structure, which they of course continue to do so long as antitrust immunity is in place.

The strongest evidence of this is the fact that, in an industry affected, as so many of our industries were, by the recession, there is considerable excess capacity. Nevertheless, we continue to witness significant entry into the industry at the same time. And although there has been discounting, there has not been a sufficient reduction in prices, which we should have observed and would have observed in a competitively performing industry to bring about an equilibrium in the industry. Instead, we continue to see this peculiar phenomenon of substantial excess capacity, but with rates high enough to attract new entry into the industry.

Discounting has been on the order of 10 to 20 percent off collectively established rates, and there has been an enormous increase in the filing of independent actions. The number of independent rates filed between 1979 and 1982, a period of 3 years, reflected an increase on the order of 600 to 700 percent, and it is quite evident

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that the act was having some effect, particularly pronounced in the LTL segment, where competition was fairly keen.

All this should not obscure, however, the continued anticompetitive effects of the rate bureaus and their ability to act collectively on general rate increases. And class rates, particularly class rates, since class rates are the starting point from which discounting occurs, continue to have real and harmful effects.

Congress does not need to rely on the events since 1980, however. It reached a conclusion in 1980 that was soundly based, and it has not changed, that the structure of this industry is that of a competitive industry. There is no justification whatsoever for regulation in an industry that has the structure of the trucking industry.

Its performance has been very poor since 1937. We have studies on regulation in the motor carrier industry from countries all over the world. The results are quite uniform, and I would strongly urge the Congress to go forward and implement the conclusions that the Commission, ably chaired by you, Mr. Chairman, reached after a very exhaustive review of the available economic evidence. The conclusion of that Commission was that there is no sound reason to treat the trucking industry differently than other industries in our economy and that antitrust immunity for collective ratemaking action should be totally withdrawn.

That concludes my formal statement, Mr. Chairman. I would be happy to answer any questions that you or the committee may have.

The CHAIRMAN. A couple of questions if I might, sir. Clearly, there is some need, when you are fixing a joint rate, for trucking company A to talk to trucking company B.

Mr. BAXTER. In interlining arrangements or joint rate arrangements, that certainly is true.

The CHAIRMAN. The trucking industry has expressed a fear that if they do not have the immunity from the antitrust laws, they run the risk, even in legitimate conversations, of violating the antitrust laws in fixing those rates. Could you comment on their fears?

Mr. BAXTER. Yes. Their fears are totally unfounded. We have said that so many times, in so many places, one must eventually begin to wonder whether the concern is that deeply felt or whether it merely becomes a convenient justification for the continuation of regulation.

It is entirely clear as a matter of antitrust law that discussions for the purpose of interlining or joint rates, so long as that is what is being discussed, raise no antitrust problems whatsoever.

The CHAIRMAN. Do you think you can agree with the statement of the Chairman of the Interstate Commerce Commission that for all practical purposes we could abolish all regulation over trucking except for, as he indicated, some area of household goods and people?

Mr. BAXTER. I see a legitimate function to be performed by some safety regulation.

The CHAIRMAN. Pardon me. He included safety and "fit, willing and able," and some insurance. But short of those.

Mr. BAXTER. And insurance?

The CHAIRMAN. Yes.

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Mr. BAXTER. I agree. Financial responsibility requirements may be appropriate. Apart from that, I see no justification for any economic regulation whatsoever, including the household goods sector.

The CHAIRMAN. Let me ask you this, Mr. Baxter. Your comments on this are well known. You have expressed them to me privately before. Secretary Dole's views are well known and she has expressed them privately and publicly, and publicly again here today. Chairman Taylor's views are well known.

I think the three of you, your agencies or departments, are 100 percent of all of the major agencies that are responsible for the regulation or the supervision of the antitrust position of the trucking industry in this country. Why in your judgment is the administration reluctant to come forth, when all of their major advisers are saying go forth?

Mr. BAXTER. My statement was cleared through OMB, Mr. Chairman.

The CHAIRMAN. Let me ask you this. Are you speaking for the administration today?

Mr. BAXTER. The presentation of the statement I have made to you today was authorized by the administration.

The CHAIRMAN. Thank you very much. I am delighted to know that and did not know that before.

I have no further questions.

Senator PRESSLER. I have no questions.

The CHAIRMAN. That puts the administration clearly on record as eliminating all further regulation of the trucking industry, with those exceptions that we talked about: insurance, safety, and the possibility of some household goods and moving of people.

Thank you very much. I appreciate it.

Mr. BAXTER. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF WILLIAM F. BAXTER, ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to participate this morning in your oversight hearing on the Motor Carrier Act of 1980. In enacting that Act, Congress took an important first step in moving the trucking industry from one ruled by federal regulation to one guided by free market forces. I am pleased to provide the views of the Department of Justice on developments under the Act and to urge Congress to take a second important step in reforming the trucking industry. We believe that Congress should promptly implement the Motor Carrier Ratemaking Study Commission's recommendation that antitrust immunity for collective ratemaking be eliminated.[1]

In 1980, Congress faced a motor carrier industry burdened by government and industry regulation. Federal regulation strictly limited entry and enforced industry cartels (*i.e.*, rate bureaus) which established trucking rates. This complementary system of government and industry regulation was correctly seen as economically inefficient and therefore costly to consumers.

The 1980 Act struck at some, but not all, of the pillars of this wasteful regulatory scheme. Congress substantially lifted entry restrictions, encouraged carriers to file independent rates, tightened up certain rate bureau procedures and, effective July 1, 1984, eliminated antitrust immunity for collective establishment of single-line rates. Congress left some major pillars standing, however. The ICC continues to have authority to engage in rate regulation, including the power to substitute its own rates for those proposed by carriers. Moreover, antitrust immunity will contin-

[1] Motor Carrier Ratemaking Study Commission, *Collective Ratemaking in the Trucking Industry, A Report to the President and the Congress of the United States* (June 1, 1983).

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ue, even after July 1, 1984, for agreements pertaining to general rate increases, freight classifications, and changes in tariff structures limited to industry average carrier costs. Thus, while the 1980 Act offered major reforms, it left intact significant portions of a regulatory scheme damaging to consumers and to the efficiency of our economy.

Events since 1980 have established that the "half-way" nature of the 1980 Act has deprived consumers of the full benefits of a competitive trucking industry. Although new entry and rate discounting are occurring at an unprecedented pace, the continued existence of collective ratemaking appears to be slowing the industry's reaction to prevailing economic conditions. At a time when rates should be falling throughout the industry, there is a rate "stickiness" in some segments which I believe is properly attributable to the survival of collective ratemaking.

Entry has increased dramatically in the last three years. New firms are entering the trucking industry and existing firms are extending their routes. A significant number of carriers now have nationwide authority. Contract carriage, once a relatively small and specialized segment of the trucking industry, has become increasingly important. It is now literally true that any responsible carrier can obtain authority to carry freight anywhere in the country.[2]

The 1980 Act's effect on trucking rates is a more complicated story to tell. New entry came at a time of unusually low level of demand for truck transportation. Trucking, characterized by derived demand for its services, has clearly suffered from the economic downturn of the last three years. Traffic figures are lower than any other time in the last 15 years.[3] The resulting excess capacity has placed downward pressure on trucking rates. Rate discounting, once an unfamiliar sight in the less-than-truckload [LTL] segment, has become widespread. In both the LTL and truckload [TL] segments, discounts of 10 or 20 percent are now common. While most discounting is "selective," i.e., applied to particular types of shippers or shipments or to certain levels of business, discounts are more diverse than ever before. Carriers that formerly limited carefully any discount to particular large shippers have been writing their tariffs for broader application.[4]

This rate discounting has been accompanied by some movement away from collective rates. There has been a veritable boom in independent rates—both independent actions and tariffs filed individually by carriers.[5] This phenomenon is particularly clear in the LTL segment because LTL carriers once adhered so uniformly to class rates. Now, it is relatively common for carriers to use rate bureau levels as a base price and to discount from that base.

The fact that carriers are apparently moving away from collective rates should not obscure the continued anticompetitive effect of rate bureaus, however. Indeed, the events since 1980 clearly show the economic harm of collective ratemaking. Given the significant excess capacity in the trucking industry, one would expect trucking rates to fall until a new competitive equilibrium level is reached. That, of course, is the classic way in which free market forces set the efficient price without government or industry intervention. In the midst of this period of excess capacity, however, rate bureaus have continued to file significant increases in class rates.[6] At least while voting at rate bureau meetings, the carriers are evidently trying to stem the downward pressure on rates by raising the general price level. Since class rates provide the reference point to which discounts are applied, an increase in the class rate has a real effect on overall rate levels, including the level of discount rates themselves. As a result, two major shipper groups have asked the ICC to withdraw antitrust immunity for collective ratemaking with respect to shipments under 1,000

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[2] During last year's oversight hearing, the ICC reported on the massive increase in operating authority applications since 1980. Statement of Reese H. Taylor, Jr., Before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation (December 14, 1982) (cited hereinafter as *Taylor Testimony*). While the pace of entry has evidently slowed, the basic patterns have continued. *See* ICC Office of Transportation Analysis, *Staff Report No. 9, Highlights of Activity in the Property Motor Carrier Industry* (July 1983) (cited hereinafter as *OTA Report*).

[3] *See* Economic Research Committee, Regular Common Carrier Conference, Quarterly Operating Results of the Motor Common Carriers of General Freight, 1st Quarter 1983 (July 15, 1983).

[4] For a fuller discussion of current rate discounting, see Comments of the United States Department of Justice, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980,* Ex Parte No. MC-166, at 3-5, 31-36 (January 17, 1983).

[5] There were 180,829 independent rate actions in fiscal 1982, compared to 27,141 in calendar 1979. *OTA Report* at 2.

[6] *See, e.g., Taylor Testimony,* Appendix V; *OTA Report* at 9-10.

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pounds.[7] Moreover, the fact that discounting is so common indicates that the LTL carriers themselves recognize that class rates are above competitive levels.

Congress does not need to rely on events since the 1980 Act, however, to decide that antitrust immunity for collective ratemaking should be withdrawn. Congress reached that conclusion for single-line rates in 1980, based on the evidence available then. Since that time, the Motor Carrier Ratemaking Study Commission has issued a comprehensive and insightful report recommending that all collective ratemaking activities be fully subject to the antitrust laws after July 1, 1984. The Commission, ably chaired by Chairman Packwood of this Committee, reached that conclusion only after an exhaustive review of the available economic evidence from a wide variety of sources.

In essence, the Commission concluded that there is no sound reason to treat the trucking industry differently from other sectors of our economy. The fundamental premise of our economic system is that the free market will achieve the greatest possible efficiency in the allocation of investment capital and of goods and services. Since the trucking industry, absent government regulation, is structurally competitive, there is no reason why blatant price fixing by members of that industry should be tolerated. The Motor Carrier Ratemaking Study Commission examined each of the reasons offered to explain why the trucking industry might be different. It could find no adequate reason for permitting price fixing to continue and no adequate reason for providing antitrust immunity for those collective activities which are not anticompetitive.

Mr. Chairman, as you continue to monitor the results of the 1980 Act, I ask that you keep in mind that the important task of making the trucking industry truly competitive is not complete. Congress must address the remaining pillars of regulation, and particularly antitrust immunity for collective ratemaking. I urge that Congress address the recommendation made last June by the Ratemaking Study Commission and implement by legislation that recommendation—the complete withdrawal of antitrust immunity in the motor carrier industry.

Mr. Chairman, that concludes my prepared remarks. I will be happy at this time to answer any questions from you or members of your Committee.

The CHAIRMAN. As I indicated earlier, Mr. Presser at the last moment indicated he could not testify, but I was told someone would be coming to testify on behalf of the Teamsters.

Gentlemen. Gentlemen, for me and for the reporter, if you would identify yourselves and your positions, we would appreciate it. And then, I will let you choose among yourselves how you are going to make your presentation.

STATEMENTS OF R. V. DURHAM, PRESIDENT, LOCAL 391, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; AND PAUL LOCIGNO, GOVERNMENT AFFAIRS DIRECTOR, ACCOMPANIED BY MARVIN SAUNDERS; JACK CHAMBERS; AND BARNEY HUFFMAN, TRUCKERS

Mr. DURHAM. Mr. Chairman, I am R. V. Durham. I am chairman of Teamsters Local 391 in Greensboro, N.C., and also director of the International Brotherhood of Teamsters Safety and Health Department.

I have with me this morning three drivers who have been affected by deregulation, and after Mr. Locigno makes his opening remarks, I would like to introduce them at that point.

Mr. LOCIGNO. Mr. Chairman, my name is Paul Locigno. I am director of governmental affairs for the International Brotherhood of Teamsters.

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[7] National Small Shipments Traffic Conference, Inc., and Drug and Toilet Preparation Traffic Conference, Inc. *Petition Seeking the Adoption of Rule Withdrawing Anititrust Immunity for Collective Ratemaking by Motor Carriers of Property with Respect to Rates on Shipments under 1,000 pounds* June 27, 1983).

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Our general president, Jackie Presser, wanted to be here this morning, but thought it was more important in the brief time allotted today to present the Teamsters' deregulation story to this committee by hearing directly from our laid-off members, who are typical of the nearly 100,000 Teamsters currently unemployed through the Nation due to the adverse effects of the Motor Carrier Act of 1980.

Mr. Presser's full statement to this committee, along with the detailed studies,[1] have been submitted to you for the record. Mr. Presser has asked me to inform you, Mr. Chairman, that he will be glad to respond to any questions based on his statement in writing to you, and that he will make available to this committee any and all resources and information that we have available at the International Brotherhood of Teamsters on the impact of deregulation and how it has affected our membership.

As Mr. Durham has previously stated, he is here today with three of his members from his local, and from here I would like Mr. Durham to introduce his first driver, Mr. Chairman.

Mr. DURHAM. Mr. Chairman, local 391 is an approximately 10,000-member local. We are in the top 20. We have participated in our survey for the past 3 years, and the layoffs that have resulted as a result of deregulation, and I am sure has some combined effect of the recession. We currently have about 9,000 members working. About 4,000 are in freight and of those 4,000, 40 percent are laid off.

We have asked in the past, and we would invite again, people to come into our area and really find out what the real world is all about. These people are suffering.

I was astounded to hear some of the remarks made by the earlier witnesses that everything is fine. I am here to tell you, and I am here to introduce these men to you, to let you know that we have some very serious problems today.

The first, I would like to introduce to you three drivers: Mr. Jack Chambers, who lost his job with Spectre; Mr. Barney Huffman, who was laid off from Pilot Freight Carriers; and Mr. Marvin Saunders, who was laid off from Roadway for almost 3 years.

The first witness I would like to have tell their own words of their suffering and situation is Mr. Jack Chambers. Jack.

Mr. CHAMBERS. Good morning, Senator.

My name is Jack Chambers. I am from Winston-Salem, N.C. I am also a member of the Local Teamsters 391. I am here to give you my personal impressions of deregulation. I am afraid they are not too good.

I was employed 16 years with Spectre Redball, a well-functioning motor carrier——

The CHAIRMAN. By who?

Mr. CHAMBERS. Spectre Redball.

Incidentally, they were fifth or sixth in the Nation. In September 1981 my days of comfort were over. Stability came to an end, as the Viking Division of Spectre was terminated, taking with it my job. I was terminated from the company in September 1981. Spectre, of

[1] The studies have been retained in the committee files.

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course, within a year went out later, bankrupt, eliminating any hope of job recall.

In 1981 and 1982 I was forced to draw unemployment. Time to time, I found temporary, other temporary employment with other trucking companies.

From 1981, there has been one problem after another. My wife, who is terminally ill with cancer, became disabled and has in the past few years gotten steadily worse. Covered under her group policy and my Teamsters insurance, but now both programs are gone. Hers expired after being on disability for 2 years, mine after my 6 weeks grace period. I cannot even purchase any insurance for her at any cost, which is so limited. The only thing I can get to cover me is for a broken leg or a toe or something like that, which is $65 a month, and that is all I can afford. But I am lucky to get that.

As for my wife, she is covered by medicare. But again, that creates other problems, 304 deductible every 60 days to keep her covered. If she's in the hospital for treatment they cover everything. But once she's an outpatient, it's a different story. I pay the first 20 percent, and there's often for bloodwork and transfusions. Mostly, the transfusion is about every other week.

Senator, it isn't that easy. I was lucky to have two hospitals where she can receive experimental therapy. One was at Duke University, near my home; and Johns Hopkins, nearby Baltimore. She was to go through treatment at Johns Hopkins every 8 weeks, and when she's too weak for therapy she goes for checkups to check her condition.

I pay for those checkups out of my pocket, and that's not easy. I used to bring her in a van I had customized, but she's too sick for that any more, so I have to fly her in, pay her hotel bill the day before and the day after, and that's very expensive.

It's a real concern for me. For each trip it costs me about $900. I pray each time that she will be healthy enough to be admitted, just so she can get the treatment.

Over the period of the illness I've spent more than $14,000, and that's a pretty good burden to try to do on unemployment and with the help of working with three different other trucking companies.

I was willed a small house after my mom passed away. That's how we're making it now. The mortgage is not but $150 a month. But I don't owe anybody any money, and thank God that, you know, with the exception of the medical bills I am very lucky.

I blame deregulation for some of this. I am not a politician, I am not a lawyer, or anything, but since the Motor Carrier Act of 1980 came into being—Spectre was a healthy company, as you know. It employed a lot of people. We were contributing members of society, and we had dignity at that time.

After my layoff, I lost all my health insurance, my chance at a pension and security for the future as well. I thank God that I had a Teamsters contract with the freight industry behind me, because it meant the difference between starvation and salvation to me. In the past 2 years, thanks to the provisions in the Carolina supplement of the Teamsters, the master Teamsters agreement, laid-off workers, including myself, could work at other Teamster companies on a preferred basis as casual workers before they could hire

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anybody or work anybody off the street, or either had another job somewhere else.

It gave us a chance, you know. Thanks to those provisions, I have been able to get 1 or 2 days a week from each company to try to get a full week work in. I am working on a dock instead of driving a truck, and I am making considerably less at that. But I am thankful for that.

I am on call 7 days a week, 24 hours a day. I have to stay at home to make sure I get the calls. At the time I am making enough to pay for her treatments so far. Without the casual labor clause, I do not believe I would have made it.

I lost. I know most of my brothers and sisters in the industry have not been so lucky. In other hard-hit sections of the country, I understand they are losing their jobs, losing their benefits, losing their homes, losing everything.

So I know you do not want to hear about my problems. I am just here to tell you my views on how it has personally affected me.

I truly believe that deregulation has caused these things. I have talked to terminal managers and others who agree with me. Some of the actions by the ICC are responsible for this today. Wide-open entry, overboard grants of jurisdiction, are disrupting the industry by throwing in too many carriers in a given area, not caring about the little guy, the shippers or small communities, by putting in place policies that do not allow carriers to earn enough profits to stay competitive enough to stay in business.

All resulted from deregulation. We are making things worse to the industry and the employees, so many of us. I beg you, look at the things as they are, find some way to help us.

General President Presser in his written testimony called for, at the very minimum, a job referral bank mandated by the original law, along with some sort of compensation program for those workers who have been harmed by deregulation and the impact on our industry. I agree with that.

I am not a politician or a lawyer, as I told you. I am just a truck driver. But my livelihood has been affected and I am not sure which way to turn. Joined by 100,000 of my brothers and sisters in the same position, I am looking to you and your colleagues for a solution.

The CHAIRMAN. Mr. Chambers, you have no reason to be embarrassed presenting that story. When this Congress and this Government fails to appreciate the problem that you have, we demean ourselves; and I appreciate very much that story.

Mr. Huffman—excuse me. Is that the order you want to go in?

Mr. DURHAM. I understand we have run out of time, but we certainly would like to put Mr. Huffman on.

The CHAIRMAN. Go right ahead.

Mr. HUFFMAN. Mr. Chairman, I am Barney Huffman. I am from Claire, N.C. I am a local 391 member. I have been in the trucking industry for somewhere along 20 years, 24 years, until January 5, 1983, when I faced my first unemployment, a layoff from Pilot Freight Carriers.

Pilot used to be a healthy company, with some 700 road drivers at our terminal. Since deregulation, they since have went downhill, the company now has about 250 road drivers at our terminal. They

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say they just cannot make enough money with the low rates to keep the trucks on the road and even pay for the fuel, and that means unemployment to us.

I have been laid off for almost 1 year. I am getting desperate. I am looking for anything, but work is not easy to find, especially in my part of the country.

I come from a small town in North Carolina and I was a union steward before I was laid off. Many companies do not even want my business, much less even give me a job. I have looked, but there is not much opportunity.

Before all this happened, I was pretty well middle class. I had savings, my house was paid for, and I could enjoy a few extras. But no more.

It has been about a year. A few months ago I even tried being an owner-operator with a friend of mine and a truck that we got from another hard luck driver. I was so hard up that I even agreed to drive for just 20 percent and nothing else.

But that was a mistake. We made a few trips. Quickly, I realized it was not going to pay us anything. Actually, on one of my trips I left Salsbury, N.C., to Houston, Tex., tried to pick up work, could not find anything but a deadhead run that would not even pay for my fuel to the destination.

I finally picked up a run to Salt Lake City, Utah, and then to Oxford, N.C. After finding out when I got back to McLean that I owed them $910 for a breakdown, even more for permits, $110 for a wrecker bill, and $400 for tax, all I had to show for 3 weeks of my work are a few extra motel bills.

I turned the truck back over to the other friend, the other driver of mine, and he is taking it off the road. He cannot afford to keep it on the road.

But, Senator, in the last few months I just cannot tell you how many of my friends that I have had to help out. They are getting so desperate, they are selling anything they can, even their toolboxes, extra tires, their extra clothes that they take along with them, anything that they have, to get back home after they have been stranded at their destination point and cannot get no freight.

You know, I turned to owner-operation because I need to support my family. I am not afraid to work. I have been working since I was 12. I have two boys, one 12 and one in college. It really hurts me to see them do without. They are good about it, especially the young one. But it is hard to see them, to see kids have things that they want and cannot have it.

My wife is working 5 days a week now, but for a long time she was only working 3 days. She is doing all she can.

My other son is in college. I want him to stay, if at all possible. We are making ends meet so far, thank God, but by praying and doing without. That is the way we are doing now.

But if things go much longer, there is going to have to be a change. If I do not get back on at my company or find other work, we are going to have to sell something or take the kid out of school or sell the house. Something has got to give. We have exhausted all of our resources.

I recently went back to Pilot Freight Carriers, which was the company that I was working at when I was laid off. They tell me if

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I am not back within 3 or 4 weeks, I might as well forget about it until next summer. The company said their freight rates are so low that they cannot even afford to put the trucks on the road or even pay for the fuel.

I do not have the answer and I do not even know the answer. But for me deregulation sure in this world was not it. I hope and pray you find the answer soon, or most truckers like me will be extinct.

The CHAIRMAN. Let me ask Mr. Chambers this. Prior to deregulation, assuming you were willing to work full time, how much could you count on making a year?

Mr. CHAMBERS. Well, that is according to the contracts, and the contracts come up every 3 years. My salary went up. Prior to the time——

The CHAIRMAN. Let us take 1980. I am just trying to figure what you were making and what you could have expected to make had the contracts gone on, and you worked full time, of course.

Mr. CHAMBERS. A little below $20,000—$20,000 to $22,000.

The CHAIRMAN. Mr. Huffman, what about you?

Mr. HUFFMAN. The same, sir, approximately low twenties.

The CHAIRMAN. Mr. Saunders, in terms of salary, would that be roughly the range you could have kept on making also?

Mr. SAUNDERS. Yes, sir.

The CHAIRMAN. Is it basically because of the master contract, and that answer would be roughly the same, I would assume, for teamsters around the country?

Mr. SAUNDERS. Yes, sir.

The CHAIRMAN. And again, that is not counting overtime or anything else. But that is what you could count on on working full time, and if you worked overtime that is another matter.

Mr. HUFFMAN. Excuse me, sir. That is considered overtime in trucking, being a truck driver.

Mr. CHAMBERS. My W-2 form for 1982 was $12,000.

The CHAIRMAN. Pardon me?

Mr. CHAMBERS. My W-2 form, my statement of taxes for 1982, was $12,000.

The CHAIRMAN. After deregulation.

Let me ask this, because this is what I do not understand. Clearly, when the economy goes up or the economy goes down, there is more work or less work, and that is not unique to the Teamsters. That is across the board. But whether or not we have regulation or deregulation, you have roughly the same amount of freight to move in this country, do you not, in any economic situation, more when it is better and less when it is worse?

But does deregulation have any effect on the amount of freight that is going to be carried?

Mr. LOCIGNO. Mr. Chairman, I would like to answer that question. You are correct, there are no more washers and dryers in this Nation produced with trucking regulation or deregulation, and that is part of the problem from our perspective as the union representing these workers that Mr. Presser attempted to get across to you in his written testimony.

These drivers did not ask for regulation in 1937, nor did they ask for deregulation. They did not ask for the rug to be pulled out. Nat-

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urally, if you have prior to the act 10 trucking companies servicing point A to B and all of a sudden you have 35, from our perspective you are only playing russian roulette with people's lives, livelihood, their ability to provide an education for their families, and to keep in the economic mainstream of America.

So of course there is no more goods produced in this country. You are just doing nothing but transferring jobs, taking them away from——

The CHAIRMAN. That is what I am curious about. Transferring them from who to whom?

Mr. LOCIGNO. That is a good question, Senator. Mr. Chairman, what the witnesses from the Commission did not tell you is, on the proliferation of the new entries, the increase, they do not tell the other side of the story on how long they are there or if they go under. They are there one day and they are down tomorrow, and you are robbing Peter to pay Paul.

The CHAIRMAN. But what I cannot understand is this. If you have 1,000 washing machines to move and you can sell 1,000 washing machines and you can manufacture 1,000 washing machines, they are going to be moved from point A to B to C to D, are they not?

What I am curious about is, who moves them? Indeed, it seems to me that if the Teamsters have lost jobs somebody else must be getting jobs. Somebody must be driving some truck to move the washing machines.

Mr. HUFFMAN. Sir, with due respect, I will try to answer that somewhat. Before deregulation, and speaking in terms of 100 washing machines, we probably had 10 trucking firms to deliver that at a moderate rate. Now we have 1,000, and probably some driver would even pay them to let him take it back, just to get home.

The CHAIRMAN. What you are saying is that somebody else who is willing to accept lower wages or no wages, or an independent contractor, is moving the washing machines?

Mr. HUFFMAN. Yes, sir.

Mr. DURHAM. Mr. Chairman, to follow up on that point, we have small operators that are actually taking and moving traffic for 80, 85 cents a mile. That includes labor and everything. And the Government's USDA report shows that to offer a tractor-trailer semi today, loaded outbound and deadheading back one-third of the time, in other words loaded two-thirds of the time, you need something over a $1 a mile to operate the truck, absent any labor cost, whether it is union or nonunion.

The other observation that I would like to offer is that we have in our local breweries, dairies, bakeries, many industries. We are a general charter local, about 300 contracts. When you take trucking out, our layoff unemployment among our other employers basically is tracking about what the State average is.

But when you look at trucking itself, the 20-some-odd carriers that we have under contract, we are looking at 40-percent unemployment. And where the dishwashers or going or whatever, I guess there is a lot of speculation. Certainly, with the recession there is not as many dishwashers being made today. Hopefully, some of that will come back.

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But it is wild out there. I would invite again anyone to come into the local and meet with our members and meet with some of our employers, and you will find, as Mr. Huffman has said, there is traffic there that they cannot even move and break even. And what is happening, the owner-operators, the people that are coming into business now, they are trying to haul that traffic.

But what is happening, they are going to go out, as Barney did, after a few months. They are just not going to be able to make it.

The CHAIRMAN. What is happening, then? You heard the Chairman of the Interstate Commerce Commission's testimony. The profits are turning around, and I know the stock prices have gone up on some of the companies, and many of the major companies are staying in business. Most of them are staying in business, and somehow they are now starting to make a profit. How?

Mr. DURHAM. Well, you have a mixture there, Mr. Chairman. You have a few that are making more money today than they ever made with less employees.

The CHAIRMAN. How can they do that? Productivity or what?

Mr. DURHAM. I guess it is a load factor, the distance of the movement. There is a number of things that enter into the profit situation. But two-thirds or better of the carriers—and 1982 was a good example. It was a disastrous year.

I had a vice president of a company that is just about to go under in my local last Friday, actually crying, tears running down his face, about the problems this carrier has.

We do not have the answer. We are making some recommendations to you for your consideration, and that is to let us look at the problem for what it is. Now, the ICC can come in here and Ms. Dole can come in here. But I am here to tell you, I live with the troops. I know what is going on, and it is not as beautiful a picture as they would point out.

So I do not question that you are not getting any complaints, Mr. Chairman. But I can tell you, we get a lot of complaints in our local from our members who are out of work. And as you have heard from a couple here, all of them have a different story to tell, and some of them are very, very sad stories.

The CHAIRMAN. Gentlemen, I have no more questions, although I would like to hear Mr. Saunders' story, if you would not mind. I know he has come a distance. And if you would not mind, Mr. Saunders.

Mr. DURHAM. He only has a very short statement.

Mr. SAUNDERS. Mr. Chairman, my name is Marvin Saunders. I am also a teamster of local 391, a member. And I am a former driver for Roadway Express.

I worked at Roadway for approximately 12 years before being laid off in November 1980, shortly after deregulation went into effect. I was on layoff until August 30, 1983, when I was recalled to work. I reported back to work on September 4, only to find myself 6 days later again on layoff, along with 19 other drivers.

It has been an experience, let me tell you. And until the last 2 weeks, I have been one of the fortunate ones, the lucky ones, laid off for 2 years and unemployed today, finding a job in the area that has some health and welfare coverage. Sure, it was for less pay, less than two-thirds of what I would have made at Roadway Ex-

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press as a driver, and less than adequate health care coverage, but at least I had some.

Now, though, the last recall to Roadway, I hear through the grapevine, as you might say, that my boss at the bakery will not take me back there any more because I quit to go back to Roadway, to my regular job there. So unless I get back on, things may not be so bright any more.

I just hope that neither my wife nor I get sick. I could have carried the policy for a year at the bakery where I left, but that would cost me approximately $45 a week for health and welfare coverage, that I cannot afford.

You know, Senator, my life was going OK. I was 45 years old, looking for a pension down the road, and making good money at a steady job, until 1980. Now I just do not know. But I can tell you one thing: Because of deregulation, a lot of carriers are suffering out there, and with them so are an awful lot of drivers and warehousemen in this country.

Thank you.

The CHAIRMAN. There is one question I do have, Mr. Durham. And I might say to the rest of the witnesses, it is my hope to run the meeting right through the noon hour and finish up with the panel. So we will not break for lunch.

Recently a new master contract was negotiated, but turned down by the members. Under that contract what would have been the basic wage for teamsters? And put it on an annualized basis, if you could, again assuming working full time.

Mr. DURHAM. We last negotiated our master contract a little over a year ago, 1982. Now, that was a 37-month contract. There was no wage increase in the 37 months, no GWI. There was a continuation of the COLA, cost of living, with it understood that the cost of living could be used to make up for the increase in health care.

We earned 33 cents in the first year of the agreement. It took the entire 33 cents to maintain the health care benefits.

It kind of ties in with an interesting article I read in the paper yesterday where the Government—the millions of Government employees are going to find that their 3½ or 4 percent is all going to be wiped out by the cost of living.

Our general president attempted recently, as we all were, without success, to negotiate for a rider or to get a rider to that agreement put in place. And, of course, that was turned down by the membership.

The CHAIRMAN. This was a reopening of the contract in essence?

Mr. DURHAM. I am not an attorney, but the attorneys tell me, no, it was really an attempt to negotiate a rider, which, of course, under our constitution requires that our members vote on it. And, of course, they voted by secret ballot referendum, and for varying reasons it was turned down.

If that rider had been approved, I guess to get to the question you are asking, on certain truckload movements the rates would have been cut from 32 cents a mile, approximately, to 22 cents a mile, or about a third reduction, on top of no general wage increase that was negotiated last year for 3 years.

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It would have also established a lesser rate for the laid-off people, hopefully, that we could get back to work down the road. That is the policy question now that our general president will have to address. I am not in a position to know where he is going to turn from here on that.

The CHAIRMAN. Under the reduction, assuming that it had been ratified by the members, could the members on the average have still counted on making $19,000 to $23,000 a year? Was it in that bracket, assuming that they worked full time?

Mr. DURHAM. It would have reduced the hourly rate to $11 an hour from the $13 and a few cents. If the individual would have worked 52 weeks, 40 hours a week, they could have heard approximately $20,000; yes.

The CHAIRMAN. Thank you. And gentlemen, let me say, especially to Messrs. Chambers and Huffman and Saunders, I do appreciate those stories. I find them touching and revealing and very significant. Thank you for coming up.

Mr. DURHAM. Thank you, Mr. Chairman.

[The statements follow:]

STATEMENT OF JACKIE PRESSER, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Congress passed the Motor Carrier Act of 1980 after extensive hearings and consultation with representatives of industry, labor, the Interstate Commerce Commission, DOT and, finally, between the House and the Senate. The legislation achieved as a result of this process is the law that we in the Teamsters and our members have been living with for the past three years.

We are here today to tell you that while deregulation is touted as a major success by the Interstate Commerce Commission, most recently in its September 13 report finding that "competitive pricing in the trucking industry over the past three years has resulted in lower freight rates and greater efficiency," the opposite has been true for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its affected members in this vital industry!

Deregulation has, as we've told Congress before, had disastrous consequences for our members in the regulated sector of the trucking industry. And it has brought incredibly bad times to a number of formerly stable motor carriers who face, instead of once profitable operations, bankruptcy and the prospect of continuing bad times.

I am not a lawyer, nor am I an economist or statistician. But as the new General President of the Teamsters, in office just five months this week, I have heard enough horror stories and tragic tales about deregulation from carriers and my own members alike to fill a book.

I have shared workers' concerns since long before deregulation was enacted. In the late seventies and early 1980, as a Teamster vice president, I helped lobby against practices that we could see even then would create a totally different operating environment, both for our members and the carriers which employ them.

That is what I am here to talk about today, as you ladies and gentlemen at this oversight hearing on deregulation meet as mandated by law to judge the merits of this legislation, some three years after it was enacted.

I represent people, not numbers. For that reason, I will talk in terms of pain and dislocation, Mr. Chairman, not about statistics or statutes, although I have those, too, prepared by our expert staff of lawyers, economists and researchers at International headquarters and by the highly respected economic forecasting and consulting firm, Data Resources, Inc., which I know has prepared previous highly regarded surveys for the Senate's use.

We must note, however, that continuing actions by the Interstate Commerce Commission do more damage every day to the trucking industry—through such policies as wide open entry, overbroad grants of jurisdiction, by ignoring the common carrier obligation in the law to service the needs of small communities and small shippers, by ignoring its mandate to minimize disruptions to the industry and by engaging in policies that clearly don't enable carriers to earn adequate profits to maintain a competitive stance or provide for fair working conditions and wages, again as provided by the Act.

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Senators, we in the Teamsters are not naive. After three years of a deregulated environment, we know there is litle to be gained by coming here today and asking to have deregulation removed. That's not very realistic at this point.

But three years ago, before the Motor Carrier Act was enacted, along with provisions that would protect the survival of the industry that employs so many Teamsters members, we in the Teamsters also sought labor protective provisions to protect our members in case of dislocations. We were told such legislation was unnecessary, since few dislocations would result.

In 1981, and again last year, in 1982, we reported on the results of surveys done by the Teamsters, documenting dislocations that had resulted, without much success.

Today, in 1983, the Department of Labor still has failed to even implement the Job Referral Bank called for in the original legislation.

For that reason, we are here today seeking equity.

We have the third in a series of Layoff Surveys done by Teamster Economist Norman Weintraub with us here today to present to the committee, and it contains, in exhaustive detail, the facts as Teamsters have felt them. That survey shows that unemployment among our regulated trucking industry membership has increased to 32.5 percent of that membership on layoff status this year, up for the third year in a row since deregulation!

Our survey went even farther this year.

We learned that few of our laid-off members have found other employment within the jurisdictions of their local unions and that it is unlikely laid-off workers covered by this survey obtained other employment at all in establishments covered by our local unions' collective bargaining agreements.

What does that mean? To me, as a Teamster leader committed to providing for the needs of those 100,000 Teamsters sitting idle out there, it means a lot.

It should matter to you as well, since the overwhelming percentage of these people probably are using or have exhausted their unemployment benefits. They are not contributing to the federal or state governments with their taxes, depriving both tiers of government of badly needed revenue bases. And they are having to rely even further on state and federal welfare doles for their food, health care, and dozens of other services.

We have members across this country who've been out of work a long time, thanks to deregulation. Most of them are existing on unemployment benefits (if they're lucky enough to still have something left of that 26 or 39 weeks of coverage, or an extra 10 if they live in a particularly hard-hit state). And we all know with benefits averaging about $125 a week nationally, ranging from Alabama's low $90 per week to Massachusetts' $258, nobody's getting rich.

And when you consider that those benefits are about a third of an average worker's income, and Teamster drivers and our other workers in related industries who've been impacted by the losses in trucking revenue and tonnage were very well paid, you see that their losses, like those of workers in the auto and steel industries, are felt even harder.

Consider, too, that most people are unemployed for less than five weeks usually, with the overall average time out of work generally not more than about 15 weeks, according to the Labor Department, and you begin to see the enormity of our problem, with some of our people out of work for two years or more.

Sure, when the benefits run out, there's welfare, a part-time job if you're lucky, perhaps sending a spouse or child to work, and food stamps.

But these people are professional truck drivers, not doctors. Truck driving is likely their principal occupation, one not easily exchanged for another job. For those in related industries affected, like warehousing, the story's the same; these job skills are not easily exchanged for others.

We're not talking about people looking for a free ride either, but about workers committed to the work ethic; about people who've spent a lifetime providing the nation with goods and service in the fastest, most efficient, most economical way possible, who've always been self-sustaining and independent, and whose jobs now have been legislated out of existence.

People who've spent a lifetime working to own a home now find themselves scraping to pay mortgage payments, car loan notes, bills for the kids' education, and worrying about how to put food on the table. There's damn little left over, believe me.

I know these people are desperate, because they have been calling us, too. In my own home area, Ohio, where high unemployment has so severely strained the state economy these past two years, the Ohio Conference of Teamsters Service Bureau, which deals with more than one hundred thousand people in that area for us, has

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been getting a growing mountain of calls from desperate members, who tell us the same tragic stories.

There, we are getting calls from people who can't pay their light bills, can't afford to heat their homes, have had their electricity shut off, and facing a family crisis and need help, but have nowhere else to turn. We are there for them, of course, and help them or direct them to people who can, but think of the cost in dignity to a man or woman who, until this legislation was enacted, was always able to stand alone, be self-sufficient, and a proud contributing member of the economy! Dignity is gone. All that is left is disgrace, degradation and an overpowering feeling of despair.

I ask you, Senators, what happens when your health insurance runs out, and you have a sick kid? Where do you turn? Hospitals don't want to admit you, even to the emergency room! Doctors don't want to treat you if you can't pay. God forbid you have a life-threatening crisis that requires immediate treatment, because then you're really taking your life in your hands!

What happens if your youngster has a chronic condition like asthma, goes into respiratory distress and needs treatment, or a youngster falls and breaks a leg, especially after health benefits run out? The emergency room will turn him away, without insurance. A doctor will want proof of ability to pay before he'll treat the condition usually.

These are the facts of life our unemployed members are facing every day. And for the breadwinners and divorced parents who are the sole support of their families among these unfortunates, they're especially scary facts to face.

Teamsters covered by our National Master Freight Agreement in the trucking industry have some of the best health and welfare plans in the country, under dozens and dozens of group policies. But no plan can afford to cover people indefinitely without contributions coming in, so after a period of time, these workers lose their health and welfare coverage, unless they can find another job in the industry. And they can't in today's deregulated environment!

Group coverage under those Teamsters plans, of course, ranges across the board, but in Ohio I know it costs about $60 a week to cover a worker and his family of three or four, with high option coverage.

When your extended benefits expire, if you could afford to pay for them in the first place, consider what it will cost to replace them in the marketplace today with health care costs so high. Two hundred dollars a month for moderate, as opposed to the high option coverage they've lost, probably wouldn't be unreasonable, but who can afford to pay that on unemployment or welfare? We are aware that two Congresses have considered this question of assistance for health insurance, and we have supported such legislation, but none now exists, and for workers laid off in trucking and already left unprovided for in legislation three years ago, that is of little comfort.

And what about the eviction notices and mortgages foreclosures. An alarming number of our members have faced these too, as they use their minimal benefits to make ends meet, only to find the investments of a lifetime going down the drain, again due to legislation that paid no heed to their needs.

Finally, what about the worker who's exhausted benefits and hope? Consider the expenses for the state and the federal government as he or she experiments all the side effects that then ensue. Health authorities tell us in the Teamsters that a broad range of increased emotional and physical ailments are reported in communities hard hit by layoff and plant closings. How much harder must the impact be for a worker, used to esteem, a high paying job and a high standard of living, in return for long days behind the truck wheel or on the loading dock?

Many mental health clinics and hospitals are linking the loss of jobs to increases in family disturbances and child abuse (causing problems for the police and many of the state and federal welfare agencies), alcoholism (another drain on state resources), behavorial disorders, stomach ailments, colds, sleep problems and other stress-related ailments.

Experts report more every day on the "pink-slip syndrome" being seen, where the laid-off worker for the first few weeks after layoff may experience relief, with a lessening of tension and new hope for finding a job.

The period from three to six months of unemployment is a time of anger and family trauma, we are told by the health experts. The worker tends to blame the company and other family members. Nonworking spouses may look for a job, and teenage children drop out of school to work.

Six months seems to be the critical breaking point, we are told. Unemployment benefits usually stop, and workers are thrust into an economic nowhere land. Depression replaces anger. After a year, the unemployed person is so isolated and frus-

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trated he or she may not go looking for work any more. Researchers also caution that just finding another job isn't always the solution. In many instances, the new job involves lower status, less pay, fewer benefits and no long-term security.

For many, the critical issue, as we said, is health insurance. Most laid-off workers eventually lose their coverage. Buying individual insurance is usually too expensive. A laid-off Teamster driver in Michigan, for example, could end up spending two-thirds of his unemployment payments to buy medical coverage comparable to his union plan.

At the same time, as the federal government tries to cut back health programs, unemployed Teamsters are finding it difficult to qualify for Medicaid or Medicare. A real gray area is growing up, where a lot of people who can't afford to continue their medical insurance also find that they're ineligible for public assistance because they have assets such as a home or car, says one welfare worker in Michigan.

Workers are left trying to balance priorities. You can either pay the $200 to continue much-needed medical insurance or try to pay for food, rent, utilities, insurance. You have a lot of priorities and not enough money.

And what about pensions? I can't tell you how many stories we have head at headquarters of members who've been thrown out of work as a carrier went bankrupt as a result of deregulation, only to lose full pension protection.

They're too young for Social Security, so what do they do? The answer is nothing, just wait.

Teamsters across the country have been trying to do their part. We've been setting up referral centers, like one in Eureka, California, and a Kalamazoo bank in Senator Riegle's home state of Michigan that provides needed groceries. All these things are good, but that is not enough.

We in the Teamsters honestly believe that this legislative body has the courage and the compassion to help redress the damage wrought through deregulation for Teamsters members. We were told initially and every year since that if we could prove deregulation had harmed the people we represent, we could win redress for them. Frankly, that time seems to be upon us.

Our union-commissioned economic surveys for three years in a row have shown mounting job losses in the trucking industry, directly attributable to deregulation. One hundred thousand workers have been legislated out of their jobs, with virtually no protection or compensation!

This annual survey, which begin in April, 1981, shows that each year, the number of layoffs and the layoff rate have increased dramatically.

Our latest survey for April of 1983 shows that in our representative sampling of 36 local unions, some 28,394 over-the-road drivers and other terminal employees out of a total of 87,369 such workers with seniority rights under our National Master Freight Agreement were on layoff—a layoff rate of 32.5 percent.

From that sampling, the IBT's economists were able to estimate[1] that the layoff rate in the general freight trucking industry in April of 1983 was between 28.6 and 35.7 percent and that between 86,000 and 107,000 of our members who were employed under the NMFA when the Motor Carrier Act of 1980 was enacted are now on layoff.

In other words, out of 300,000 drivers and other workers who were gainfully employed by general freight motor carriers in 1979–80 almost 100,000 or ⅓ of the total work force lost their jobs.

In our prior surveys of representative local unions, the responding local unions reported that 22.4 percent of the road drivers and other terminal personnel were on layoff in April, 1981 and that the layoff rate increased to 28.1 percent in April, 1982. The 1983 survey shows a further increase to 32.5 percent.

All regions of the country showed high levels of layoffs and increases in the layoff rates from April, 1982 to April, 1983. The 1983 layoff rates ranged from a low of 26.3 percent in our Western Conference to a high of 35.4 percent in our Southern Conference.

A comparison of the responding local unions showed that the great majority had increases in their layoff rates from April 1982 to April 1983.

Only 27.8 percent of the 36 local unions in our sample showed a decline in their layoff rates betweens the two years, while some 72.2 percent or about three-quarters of the locals experienced an increase in layoffs. In addition, of the 36 local unions in our April, 1983 survey, 27 or 75 percent reported a layoff rate of 25 percent or higher.

The most recent survey shows also that Teamster members in general freight trucking lost jobs either because motor carriers terminated operations or because

[1] With a 95 percent confidence level.

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they were laid-off from carriers still in business. Of the approximately 100,000 workers on layoff, the International Union estimates that some 30,000 lost their jobs permanently when their employers closed their businesses and about 70,000 are on layoff from motor carriers still in operation. The April, 1983 survey also showed a layoff rate of 23.5 percent for drivers and other terminal workers who are on the seniority lists of motor carriers who were still in business that month.

For the first time this year, the Teamsters asked several local unions to furnish detailed information so that an effort could be made to determine the duration of layoffs. Teamster locals in St. Paul, Minnesota; Toledo, Ohio; Harrisburg, Pennsylvania; and Winston-Salem, North Carolina participated, and of the 1,973 over-the-road drivers and other terminal workers on layoff in April, 1983 in these local unions, 26 percent were on layoff for more than two years.

An analysis of the dates of hire showed that 42 percent of the workers on layoff had 10 or more years of seniority with their employer. Only about 5 percent were hired after 1979. None of these workers were laid off by carriers that terminated operations between July 1, 1980 and April 1, 1983.

From three local unions that furnished data on carriers that terminated operations since the enactment of the Motor Carrier Act of 1980, it was determined that 72 percent of these drivers and other terminal workers who permanently lost their jobs were hired before 1973—some 27 percent were hired before 1958.

We feel that the data furnished by these local unions is indicative of the true conditions existing in the general freight trucking industry.

Since the enactment of the Motor Carrier Act of 1980, layoffs have increased annually to the point that almost 100,000 workers or about 35 percent of the work force have lost their jobs. The layoffs are of long duration and not a short-term condition. A modest or even substantial overall recovery in the general economy will not undo the impact of the Motor Carrier Act of 1980, my economists tell me.

We want to again renew today our offer of full cooperation with any Federal Government study of layoffs and unemployment in the trucking industry.

This year also, in order to substantiate our claims of the damage that deregulation has caused for Teamsters, we took several additional steps to monitor the real impact of this legislation on a vital American industry.

Alarmed by the number of carrier bankruptcies there have been since deregulation was enacted, resulting in a high toll for our members as our survey shows, the Teamsters legal staff listed the on-going bankruptcy litigation in which we are representing our members.

That survey revealed that since the passage of the Motor Carrier Act of 1980, the Teamsters Union has been involved in twenty major Class I carrier bankruptcy cases, where the principal factor for the bankruptcy was the adverse impact of deregulation.

In some of these cases, the companies have been able to continue to operate under the protection of the Bankruptcy Court, but at a reduced level.

However, thirteen of these carriers were unable to continue to operate and were forced into liquidation, thereby destroying the jobs of more than 25,000 Teamster members.

And this figure does not include the employees of these companies who were unrepresented or were represented by another union!

In many of these cases, the company was forced to file bankruptcy and to ultimately liquidate even after our members had made wage concessions that ranged from ten percent up to thirty percent in basic wage rates.

These wage concessions were in addition to the concessions granted under our National Agreement during the 1982 negotiations.

In other cases, the companies never even bothered to file for bankruptcy, but merely closed their doors and conducted the liquidation themselves. Most of these cases involved medium and small-sized regional carriers that were literally driven out of business by the "big boys" of the industry.

Dealing with these liquidations and bankruptcies has proven to be one of the most frustrating experiences in the life of a representative of working people.

In these cases, we used our best efforts to assist these companies to survive by making concessions in wages, fringe benefits and work rule changes.

It is one of the most difficult things for a trade union leader to recommend giving back wages, fringe benefits and working conditions that you have fought to build up over the years. But even these painful efforts to reduce labor costs were not enough to save these companies.

The process then shifted to participating in the bankruptcy and liquidation process, in order to ensure that our members received their fair share of the cash value of the assets in order that the wage claims of our members and the claims of our

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trust funds were at least partially satisfied. However, in most of these cases, the assets of the company had been used as security for loans to keep the company in operation.

Therefore, our members ultimately received very little in the way of satisfaction of their unpaid wages and benefits in the liquidation process. Despite the efforts of our union and the sacrifices of our members to keep these companies in operation, the members lost their unpaid wages as well as their jobs.

Take just one case we were involved with as an example, that of the Akers Central litigation, one that involved more than 900 Teamsters, with seniority up to and exceeding 30 years, all of whom lost their jobs as the result of actions that were in effect condoned by the ICC.

This problem began in 1978 when the owner, Victor DeMaras, closed his union operation and shifted the work to a non-union operation. Subsequently, the union lodged litigation before the National Labor Relations Board, the courts and the ICC. The result was a settlement for some $1.6 million and an agreement that DeMaras would continue under the National Master Freight Agreement at least through 1985.

By March of 1982, the companies had paid some $1 million into the escrow account. From that time on, all payments ceased and the response of the union was to file a motion for contempt and to collect the entire amount immediately. The company's reaction was to go into bankruptcy in Miami, Florida in June of 1982.

All four companies were placed in bankruptcy, which included Akers of North Carolina, Akers of Delaware, Central Motor Lines and Transportation Investment Company [TIC]. Two of those companies are in Chapter XI and two in Chapter VII.

During the course of this litigation, DeMaras was able to obtain 48 State Authority for Akers of North Carolina and another 48 State Authority for Central. Obviously, the ICC never considered the issue of "fitness."

DeMaras is still very active in the trucking industry because of his other manipulations. In 1978, he created Central Division of North Carolina. Apparently, this company has not been activated. In 1979, he created Central Division of Florida. This company is very much alive and is the company through which the money flows, which we estimate to be well in excess of $10 million a year. In 1981, Northern Freight Lines, which was a wholly owned subsidiary of Central, was changed to Central Division, Inc. of Georgia. The ICC not only approved the change, but then gave Central of Georgia 48 State Authority. This meant that DeMaras now had three companies with 48 State Authority and he is using Central of Florida to lease the rights from these three companies and to operate with some 200 drivers who most probably are owner-operators.

Recently, Judge McMillan agreed to add these three new corporations to his judgment entered in June of 1980. This may mean that these companies will have liability for the remaining $600,000, plus interest.

In open court before Judge McMillan when the above facts were revealed, the responses of the ICC attorney was to request that the court permit the Commission to withdraw from the case.

The union strongly opposed that request and Judge McMillan has agreed and insists that the ICC remain in the case and become active.

The ICC attorney also advised the court that Central of Florida has now applied for brokerage rights to the ICC, which would permit that company to lease from any company and to charge the shippers and customers directly. In effect, it would mean that DeMaras and Central of Florida would not need the operating rights of Akers Central or Central of Georgia.

These contemptuous actions may not have occurred, the International Brotherhood of Teamsters feels, had the ICC thoroughly investigated the situation and considered the issue of "fitness". There was a time when the Bureau of Enforcement of the ICC would have been extremely active in this case and would have uncovered the fraud. The Commission now freely admits that it is no longer interested in pursuing such matters.

As representatives of the workers involved, we are encountering a bureaucracy intent on ignoring the "fitness, willingness and ability to serve" clauses of the law, determined to open entry to any and all comers, bent on giving the most far-flung grants of jurisdiction possible, regardless of whether they are sought or desired, and indifferent to the impact such grants of authority will have on other, established, shippers in the area already.

Mr. Chairman, we submit also that this problem grows daily, as the list of carriers driven into bankruptcy by the cutthroat competitive environment increases.

Consider, too, the impact of these closures on the communities and states in which they operated, along with the tax losses to both state and federal economies.

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A survey done by our union listed some 43-IBT represented motor carriers of general freight who had terminated operations since July 1, 1980.

Consider just a few:

[Dollars in millions]

	Number of employees, 1979	Operating revenue, 1979
Company:		
Spector Red Ball	7,610	$435.3
Jones Motor Co	3,547	147.5
Wilson Freight Co	3,754	165.1
Johnson Motor Lines	2,515	94.6
Motor Freight Express	1,802	75.7
Gordon's Transport	2,163	97.6
Maislin Transport	6,375	303.4
Mid-American Lines	971	43.5

Those figures clearly show that many profitable carriers, employing thousands of workers, were knocked out of business by deregulation and a bad economy in tandem. None was a marginal or shoe-string operation, before deregulation was enacted. Afterward, each became a death-trap, rapidly heading toward self-destruction, taking Teamster workers' livelihoods with it as it expired.

We are also submitting for the record, Mr. Chairman, a survey prepared by our Research Department, on truck terminal closings since deregulation. This data was broken down by state and community, representing population centers of all sizes, and including locations from all geographical areas in the United States. In all, 14 states were surveyed.

The data for major cities shows Philadelphia with 97 terminals in service in the Spring of 1980 and 68 operating today. This represents a 30 percent net decrease in terminals operating for that city.

Four other cities among the major cities we surveyed show a double-digit net percentage decline and they include Boston, Mass.; Kansas City, Mo.; Pittsburgh, Pa.; and Cleveland, Ohio. Among large cities with populations between 125,000–250,000, Springfield, Mass., was the hardest hit, with only 30 terminals currently operating out of the 50 that were there in 1980. This represents a 40 percent decline.

And the smaller the population center, the more acute the problems seem to become. Superior, Wisconsin, which is in a population range between 25,000–50,000, has had a net decrease in terminals of 75 percent. Of the four terminals operating in 1980, only one remains.

In the towns with populations of less than 25,000, it ranged in states we surveyed from 100 percent net decrease to 33 percent. We are sure that Senator Heflin can relate to this since his hometown of Tuscumbia, Alabama, has had a 50 percent decrease in terminals, with only one of its two terminals now operating.

My own home state of Ohio has been greatly affected by terminal closings, with every major city except Columbus showing a significant decline.

I believe, Mr. Chairman, that this data on terminal closings is significant. Obviously, a decline in the number of terminals servicing an area portends an accompanying decline in the number of terminal-oriented jobs for that area. It also shows that those communities have less service options available in terms of shipping, and thus, will be more at the prey of any still available shipper, who will be able to charge virtually anything he wants. If you're the only game in town, who will dispute your fees?

Lastly, Mr. Chairman, I'd like to introduce into testimony, one other study, one we commissioned from the prestigious Data Resources, Inc., one of the nation's foremost economic forecasting and consulting firms. Knowing that Congress sometimes disputes the surveys the union itself conducts, we asked DRI to conduct a survey assessing deregulation's impact on the industry, after first factoring out the effects of the general economic downturn.

We know that DRI [Data Resources, Inc.] is not an unknown acronym to members of this committee. I am very pleased, Mr. Chairman, to include in the record as a part of my testimony, a copy of that report recently prepared by DRI, titled "The

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Impact of Economic Change and Regulatory Reforms on the U.S. Trucking Industry."

This report looks at the importance of transportation to the U.S. economy; evaluates how the trucking industry performed under regulation; and assesses the impact of deregulation on the trucking industry, apart from the economic recession.

With charts and tables to support their findings, the report details how:

Small towns and small shippers are facing much higher rate increases under deregulation than in the decades before;

Smaller, less well financed motor carriers may not be able to provide the same level of service, not to mention a broader range and more sophisticated services needed by industries in the years ahead—as the larger carriers they have displaced since 1980;

An aging, over-the-road truck fleet implies growing safety problems in the 1980s;

And that deregulation is responsible for nearly 50 percent of the decline in Class I and II motor carrier tonnage since 1980.

These findings are no surprise to us, Mr. Chairman. Our economists and researchers, our freight division people and safety personnel, indeed the testimony of our union before the Congress since 1980, has been making these same observations.

I submit this study, Mr. Chairman, because it shows we are not a "lone voice crying out in the wilderness," but rather there are independent, respected economists and transportation analysts who share my concerns and the concerns of our union members about deregulation.

We believe that this committee, in its very important role of oversight on the Motor Carrier Act of 1980, needs to address a number of unanswered questions about the outcome of the decontrol process:

Will the competitiveness of U.S. industry in world markets be hurt by the decline of the regulated motor carrier sector?

How can smaller business and more rural communities effectively compete with larger entities if their shipping rates rise more rapidly than others in the 1980s?

Will shippers be satisfied in the years ahead with a limited range of distribution services available from the smaller, newly authorized motor carriers?

What are the public safety implications of smaller, often poorly financed carriers and an older truck fleet operating on the nation's highways?

In essence, Mr. Chairman, we believe that both Congress and the ICC need to get back to basics. The primary purpose of transportation regulation should focus on protection of shipper and community interests. Carriers have the right to know what the future regulatory environment will be to help them plan operations. Shippers need some assurances that carriers are competent to haul goods. The public needs to be protected from unsafe carrier operations. Issues of equity, public interest and public safety need to be reinstalled as pillars of regulatory faith.

Now, Senators, if you'll permit me, I'd like to introduce one of the Teamster members I was just talking about. He is here today, at the union's request, to tell you personally what impact deregulation has had for him, for his wife, and for his family.

I know you can appreciate that he is not a professional speaker, nor is he especially well-versed on deregulation policy.

He is here today simply to speak from the heart—to tell you what the ICC's deregulation policies have meant to him, in terms of differences in his lifestyle, and personal, mental and emotional well-being.

I'm sure also that you can appreciate how hard it is for him to bare himself in front of so august a body. He does it because it could mean better times ahead for himself, his fellow workers and his fellow unionists. On behalf of the union, I want to thank him for the courage, dedication and determination he is showing here today.

[The following information was subsequently received for the record:]

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS, OF AMERICA,
Washington, D.C., October 28, 1983.

Hon. BOB PACKWOOD,
United States Senate,
Washington, D.C.

DEAR SENATOR PACKWOOD: The Department of Labor has informed us that Section 35 of the Motor Carrier Act of 1980 requires them to publish a list of jobs available with motor carriers and that they have notified the Employment Service office within each state of this responsibility. The Department also told us that, according

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to their latest information, all job vacancies that have been referred to the Employment Service offices have been filled very quickly.

The International Brotherhood of Teamsters is pleased that the Department of Labor has initiated this action, however, we believe much more needs to be done. In addition to publishing a list of available jobs with motor carriers, Section 35 of the Motor Carrier Act also states that the Secretary of Labor "may require regulated motor carriers of property to file reports, data, and other information" in order to carry out this provision. We feel this is necessary and should be mandated in order for this Section of the Act to have any real impact on the severe unemployment problem now existing as a result of deregulation.

As you know, Senator, when this legislation was being considered we were concerned that massive unemployment would result but we were told that labor protection provisions, such as has been included for the airlines, would not be necessary for the motor carrier industry. We were also told that if in the course of the annual oversight investigations it was revealed that a substantial hardship had occurred to those employed in the trucking industry, that Congress would consider appropriate legislation.

We have now participated for three years in the Congressional Oversight hearings; we have produced statistics and studies, our own and others, documenting the devastation to employment in one of our country's most vital industries. We have asked for specific remedies and we have received nothing. The Department of Labor has complied with the law as passed. The International Brotherhood of Teamsters feels that Congress needs to legislate additional remedies.

We would be pleased to have an opportunity to work with your committee staff and others interested in achieving a solution to the employment problems in the motor carrier industry.

Thank you for the opportunity to respond further on this most important issue.

Sincerely,

PAUL R. LOCIGNO,
Director, Governmental Affairs.

STATEMENT OF JACK CHAMBERS

Good morning, my name is Jack Chambers, and I'm from Winston-Salem, North Carolina.

I'm also a member of Teamsters Local 391 and I'm here today to give you my personal impressions of deregulation, which I'm afraid aren't very good.

I was employed for some 16 years by Spectre Red Ball, a well-functioning motor carrier, until deregulation came along. In September, 1981, my days of comfort and stability came to an end, as the Viking Furniture Division of Spectre was terminated, taking my job with it. I was terminated from the company in September, 1981. Spector, of course, just a year later went bankrupt, eliminating any hope I might have of recall to my job.

From 1981 to 1982, I was forced to draw unemployment compensation, although from time to time I would find temporary employment with some trucking companies.

From 1981 on, though, there's been one problem after another. My wife, who's terminally ill and became disabled, has in the past few years gotten steadily worse. She had been covered under a group health policy and by my Teamster insurance, but now both of those programs are gone, hers expired after she'd been on disability for two years, and mine after my six weeks benefit grace period expired.

Now, I can't even purchase insurance for her at any cost, and my insurance, which is so limited about the only thing it'll cover me for is a broken leg or toe, is costing me $65 a month. Frankly, that's all I can afford and I'm lucky to have that.

As for my wife, she's now covered by Medicare, but again with that, there are problems. When she's in the hospital for treatment they cover everything. When she has something done on an out-patient basis, I have to pay the first 20 percent.

And Senators, that isn't always easy. The only two hospitals where she can receive the experimental therapy she needs are Duke University, near my home, and Johns Hopkins, in nearby Baltimore.

Senators, she has to go in for treatment to Johns Hopkins every eight weeks, and when she's too weak for therapy, has a check-up to determine her condition. I pay for those check-ups out of my pocket. And believe me, that isn't always easy.

I used to bring her in a van I customized with a bed, but now she's too sick for that. She's so sick, I have to fly her up, and with the hotel bill and airfare, it's not too easy.

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It's really a concern for me. Each trip easily runs me about $900 for it all. I just pray each time that she will be able to be admitted, but that's a hell of a way to live.

Over the period of her illness, I've spent more than $14,000, and that's a pretty hefty burden when you're struggling to make ends meet. And when I was trying to do it on $152 a week unemployment, it was the toughest thing I ever faced in my life. I sold my car for medical expenses.

I was willed a small house after my mother died, and that's how we're living. The mortgage on it is only $150 a month. I don't owe anybody anything, thank God, except for all the medical bills.

I blame deregulation for some of this, Senators, because, before the Motor Carrier Act of 1980 came into being, Spectre was a healthy carrier, it employed a lot of people, we were contributing members of society, and we had our dignity.

After my layoff, I lost it all—health insurance, my chance at a pension, security for today and the future.

I just thank God that I had a Teamster contract with the freight industry behind me, because that has meant the difference between starvation and salvation for me in the last two years.

Thanks to provisions of the Carolina supplement to the Teamsters National Master Freight Agreement, laid-off Teamsters, including myself, could hire on at other Teamster companies still in business and work as casual labor on a preferred basis, before they could work any non-union people.

Thanks to those provisions, I've been able to get one or two days a week at each of three diffierent companies, loading and unloading on the dock instead of driving, making much less than what I made as a driver. I'm on call seven days a week, 24 hours a day, but still, I'm earning enough to pay for the treatments my wife needs to stay alive.

Without that casual labor clause, I don't know what I would have done, but I know most of my brothers and sisters in this industry haven't been so lucky. In other, harder hit sections of the country, I understand they are losing their jobs, losing their benefits, losing their homes, their familes, losing everything they worked for all their lives.

Senators, I know you don't want to hear about my problems and I didn't come here today for that, but I truly believe that deregulation has caused some of these things.

I've talked to terminal managers and others and they agree with me that some of the actions of the Interstate Commerce Commission [ICC] are reponsible for where we are today. Wide open entry, overbroad grants of jurisdiction, disrupting the industry by throwing in too many carriers in a given area, not caring about the little guys, the shippers and small communities, by putting in place policies that don't allow carriers to earn enough profits or stay competitive enough to stay in business all resulted from deregulation and are making things worse in the industry that employs so many of us.

I beg you, Senators, look at things as they are, and then find some way to help us.

General President Presser in his written testimony calls for at the very minimum, the Job Referral Bank mandated by the original law, along with some sort of compensation program for the workers who've been harmed by deregulation's impact on our industry.

I'd agree with that. I'm not a politician, or a lawyer; I'm just a truck driver. But my livelihood has been taken away from me. And without it, I'm not really sure where to turn.

Joined by one hundred thousand of my brothers and sisters in the same position, I am looking to you and your colleagues for the fair, the equitable solution.

Thank you for your time.

Statement of Barney Huffman

Mr. Chairman, I'm Barney Huffman and I'm from Purlear, North Carolina. I'm a Local 391 member, too, and have been a truck driver for some 24 years without a layoff, that is, until January 5, 1983, when I faced the first day of unemployment in my life after a layoff from Pilot Freight.

Pilot used to be a healthy company, with something like 700 road drivers at my terminal, but since deregulation, things have been going down hill fast. The company now only has about 250 road drivers, and faces more layoffs ahead. They say they just can't make enough money these days, with the low rates, to keep the trucks on the road and pay for fuel. And that means unemployment for us.

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I've been on layoff for almost a year now, and let me tell you, I'm getting desperate. I'm looking for anything, just some kind of work, but work isn't easy to find these days, especially in my part of the country. You see, I come from a small town, and I was a union steward before the layoff, so heck, most companies don't even want to do business with me, much less hire me for a job!

I've looked everywhere, but there's just not much opportunity.

Before all this happened, I was pretty middle-class. I had savings, my house paid for and I could enjoy a few extras. But no more.

It's been a year now, and a few months back, in desperation, I even tried my hand at being an owner-operator for McLean with a freind and a truck we got from another hard-luck driver. I was so hard-up, I agreed to drive for 20 percent of the gross revenue and nothing else. Well, that was a mistake, let me tell you. We made a few trips for the special commodities Pacesetter Division of McLean, but quickly realized that going it alone wasn't going to pay us anything.

After one trip, with three or four drops, I left from Salisbury, North Carolina, went to Houston, Texas, tried to pick up work there, but could not find only a deadhead run that wouldn't even pay for the fuel to the delivery point they wanted. I finally picked up a run at Salt Lake City, then to back to Oxford, NC. Push came to shove when, after breaking down in Evanston, Wyoming on the trip, I got back to McLean only to find that I owed the company $910 for the breakdown and permits and $400 for tags, and had nothing else to show for my two weeks on the road except hotel bills. I turned the truck back to the other drivers and he's taking it off the road himself. He just can't afford to run it, the way things are now.

But, Senators, I just can't tell you how many friends I've had to help out in recent months, who were so desperate for cash to get back home once they were stranded at a delivery point that they were trying to sell their tool boxes, their tires, anything they could spare. And that's just real sad to me.

You know, I only turned to the owner-operator route because I was so desperate to support my family. I'm not afraid to work; I've been working since I was 12. But I have two boys, one 12 and one in college, and it really hurts me to see them do without. Oh, they're good about it, especially the younger one, but it's hard when they see the other kids with things and want them. My wife's working five days a week and doing all she can, but my other son's in college, and I want him to stay there, if at all possible.

We're making ends meet, so far, thank God, by praying and doing without. But if things go on much longer, there are going to have to be some changes. If I don't get put back on at the company soon, or find other work, we're going to have to sell some things, take the kids out of school, sell the house, something. We have exhausted every spare resource we had.

I went to Pilot again this week, but they said if I was not back at work in the next four weeks, I'd better forget about it until next summer. The company says there's just no freight; the rates got so cheap, they can't afford to run their trucks. I don't know what the answers are, but for me, deregulation sure wasn't it.

STATEMENT OF MARVIN SAUNDERS

Mr. Chairman, my name is Marvin Saunders. I am a Teamster Local 391 members from Winston-Salen, N.C. and a former driver for Roadway Express.

I worked at Roadway for 12 years before being laid off in November 1980, shortly after deregulation went into effect. I was on lay-off until August 30, 1983, when I was recalled. I reported to work on September 4, only to find myself six days later again on lay-off, along with 19 other drivers.

It's been an experience, let me tell you.

And until the last few weeks, I've been one of the lucky ones! Unemployed for three years and still unemployed today, I was able to find a job in the area that had some health and welfare coverage. Sure, it was at pay less than two-thirds of what I made as a Roadway driver, and it's less than adequate health care coverage, but at least I had some.

Now, though, with the last recall to Roadway, I hear through the grapevine that the bossman at the bakery won't take me back there, because I quit to go back to Roadway. So unless I get put back on, things may not be too bright from here on.

These days, though, I just try to get by as best I can.

My wife is a saint. It doesn't matter to her if we got a penny left, as long as we can make it, she's satisfied. But with a mortgage, escrow for taxes on the house, and two bank loans, I worry.

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I just hope neither my wife nor I gets sick. I could have carried the bakery policy for a year after I quit, but that would have cost $45 a week, and I just didn't have it, but this way isn't very good either.

You know, Senator, I thought my life was going okay, I was 45 years old, facing a pension eight years down the road, and making good money at a steady job until 1980. Now, I just don't know. But I can tell you one thing. Because of deregulation, a lot of carriers are suffering out there, and with them, so are an awful of drivers and warehousemen in this country.

The CHAIRMAN. Next let us take a panel of Mr. Hitchcock, Mr. Brady, and Mr. Warren.

Mr. Hitchcock, go right ahead.

STATEMENTS OF CORNISH F. HITCHCOCK, ATTORNEY, PUBLIC CITIZEN; HUGH BRADY, DIRECTOR, REGULATORY REFORM AND GOVERNMENT ORGANIZATION, NATIONAL ASSOCIATION OF MANUFACTURERS; AND RICHARD A. WARREN, GENERAL MANAGER—DISTRIBUTION DIVISION, LEVER BROTHERS CO.

Mr. HITCHCOCK. Thank you very much, Mr. Chairman.

My name is Cornish Hitchcock. I am a lawyer with Public Citizen. To my right is Hugh Brady, who is the director of regulatory reform and government organization for the National Association of Manufacturers. And to his right is Mr. Richard Warren, who is the manager for distribution at Lever Brothers, chairman of the transportation subcommittee at NAM, and also a commissioner on the Motor Carrier Ratemaking Study Commission.

As you are aware, Mr. Chairman, back in 1980, when the act was being considered, there were a number of groups—retailers, manufacturers, agricultural groups, consumer groups, and other organizations—which supported the reforms. Twenty two groups have a joint statement which they are submitting here today, and I will ask Mr. Brady to read it into the record, and then Mr. Warren will provide some testimony for the NAM.

The CHAIRMAN. I wonder if I might do this, Mr. Hitchcock. I know what Public Citizen is, but for the record would you identify what the organization is?

Mr. HITCHCOCK. Yes, sir. Public Citizen is a nonprofit consumer organization that was founded back in 1971 by Ralph Nader, who is no longer officially associated with it. We have a membership, I think, of approximately 60,000 members across the country, and are supported by contributions from the general public.

The CHAIRMAN. Would it be fair to say that you at least regard yourself as representing consumer interests?

Mr. HITCHCOCK. That is correct, Senator. We tend to regard ourselves as a consumer organization, with emphasis on——

The CHAIRMAN. You would not be recommending anything in the way of further truck deregulation if you thought it would be adverse to consumer interests?

Mr. HITCHCOCK. No, Senator. I should add that this is one area where our organization, if you will, has been active for a number of years. One of our early Nader studies, going back to 1969, did deal with trucking deregulation. And what we said in 1980 and again today is consistent with what we said 14 years ago.

The CHAIRMAN. Thank you.

Mr. Brady.

Mr. BRADY. Mr. Chairman, good morning.

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In addition to my oral statement and the oral statement of Mr. Richard Warren, it is the intention of the NAM to file a more detailed statement, a written statement for the record. Also, at the completion of my statement I am going to have to—and any questions that you have of me—I am going to have to excuse myself. I have to dart over to the Dirksen Building and give a statement over there.

This statement is submitted on behalf of the undersigned companies, associations, and other organizations regarding the need for further reforms to complete the work that Congress began when it enacted the Motor Carrier Act of 1980. As you know, a number of the organizations submitting this statement supported the 1980 act and they will either be testifying or submitting their own statements on their specific concerns about the act and how it has worked to date.

The purpose of this statement is to present their views on one important issue, namely the need to abolish remaining economic regulation of the motor carrier industry by the Interstate Commerce Commission. This statement is limited solely to motor carriers of property and will not discuss regulation of the household goods moving industry or the intercity bus industry.

It is the belief of the group signing this statement that current rate and entry regulation and immunity from the antitrust laws should be abolished, although DOT safety and insurance requirements should be retained. A number of the organizations signing this statement wrote President Reagan on July 20, 1983, urging the administration to support legislation drafted by the Department of Transportation which would accomplish these goals. A copy of that letter is attached to the statement that has been provided.

The CHAIRMAN. I might say, that letter or something must have had an effect, because you heard the statement of the Assistant Attorney General today speaking for the administration. They are now on board for total deregulation.

Mr. BRADY. Or so it would seem.

The CHAIRMAN. Well, if that statement of his was not a statement in favor of total deregulation and indicated that he was speaking for the administration, I do not know what clearer statement you could have.

Mr. BRADY. I suppose so.

While they have received no reply to date, they wish in this statement to urge Congress to take the initiative in this area by enacting legislation which would at a minimum accomplish the following goals:

One, abolish all antitrust immunity for collective ratemaking, thus letting truck rates be set in the marketplace;

Two, abolish all entry regulation for companies which can prove that they are "fit," that is, that they can meet DOT safety and insurance standards;

Three, abolish ICC rate regulation and the requirement that tariffs be filed with the Commission;

Four, give the ICC broad authority to exempt carriers from any remaining requirements of the Interstate Commerce Act, which authority now exists with respect to regulation of both railroads and airlines;

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Five, while these reforms could be effective upon enactment, Congress should also set a date upon which remaining and existing regulation of the trucking industry would end. To assure an orderly transition, however, the Commission should report to Congress on which of the remaining regulatory functions should be retained past that date.

As the committee will recall, the 1980 act was enacted with broad bipartisan support in the Congress and with broad support from many sectors of the public. Enactment of a phase II law would complete the work Congress began in 1980 and would advance such important policy goals as increasing competition in this important industry while eliminating wasteful economic regulation.

In this connection, we would note recent news reports which indicate that ICC Chairman Reese H. Taylor, Jr., supports such deregulation. And I might add that of course the Chairman has reemphasized his position here this morning.

In addition, President Reagan stated in his remarks upon signing the Bus Regulatory Reform Act of 1982 that: "There is still too much Federal regulation of the transportation industry." He also called for broad measures to eliminate many economic regulations in transportation, as well as other fields, in his February 1983 Economic Report of the President.

The undersigned groups appreciate this opportunity to present their views and are prepared to work with the committee on this important issue. Let me read those names to you: Agricultural Cooperative Representatives, Inc.; American Retail Federation; Bristol-Myers Co.; Chlorox Co.; Crown-Zellerbach; Food Marketing Institute; General Mills, Inc.; Household, International; International Communications Industries Association; K-Mart Corp.; Lever Brothers Co.; Thomas J. Lipton, Inc.; National Agricultural Transportation Association; National American Wholesale Grocers Association; National Association of Manufacturers; Public Citizen; Congress Watch; Sears, Roebuck & Co.; Super Value Stores, Inc.; Union Camp Corp.; Union Carbide Corp.; United Fresh Fruit & Vegetable Association; and finally, Whirlpool Corp.

[The letter follows:]

JULY 20, 1983.

President RONALD REAGAN,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We understand that you are considering legislation drafted by the Department of Transportation that would abolish regulation of the trucking industry by the Interstate Commerce Commission (while retaining safety and insurance requirements) and that would transfer certain regulatory functions pertaining to household goods movers to the Federal Trade Commission.

We are writing to express our support for such truck deregulation initiatives and to urge you and your Administration to work strongly for passage of such legislation.

Abolishing ICC regulation of the trucking industry would further some important national goals. By ending needless red tape, a truck deregulation law could improve productivity in this major industry. It would also boost fuel conservation and help industries and consumers keep their costs in check, thus aiding in the fight against inflation. Finally, it would help sustain the economic recovery now underway.

As you are aware, the 1980 Motor Carrier Act, which reformed traditional ICC regulation of the trucking industry, was supported by a broad coalition of companies, associations, farm groups, consumer organizations and some members of the

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trucking industry, and many of these groups would support further reforms. The only opponents were some segments of the regulated trucking industry which remain opposed to change.

We urge you to make truck deregulation legislation one of your major policy goals in this Congress, and we are prepared to help in that effort.

Very truly yours,

Agricultural Cooperative Representatives, Inc.; American Greetings Corp.; American Retail Federation; Bristol-Co.; Clorox Co.; Congress Watch; Council for a Competitive Economy; Crown Zellerbach; Food Marketing Institute; General Mills, Inc.; Household International; International Communications Industries Association; Lever Brothers Co.; National Agricultural Transportation Association; National Association of Manufacturers; National Small Shipments Traffic Conference; National Starch & Chemical Corp.; National Taxpayers Union; Ore-Ida, Inc., Private Truck Council of America; Sears, Roebuck & Co.; Super Value Stores; Union Carbide Corp.; United Fresh Fruit and Vegetable Association; Western Traffic Conference; Whirlpool Corp.

The CHAIRMAN. Mr. Brady, thank you. I have some questions, but I think I can just as well ask them of Mr. Warren when he is done. Why do you not go ahead and take off?

Mr. BRADY. That is probably a wise thing to do.

The CHAIRMAN. We are delighted to have Mr. Warren with us. He serves on the Motor Carrier Ratemaking Study Commission with me and has been a solid stalwart. I do not think you have missed a meeting, have you, since we started 2 years ago?

Mr. WARREN. No.

The CHAIRMAN. Go right ahead.

Mr. WARREN. Thank you, Mr. Chairman.

I am testifying today on behalf of the NAM on the impact of the Motor Carrier Act of 1980. These days I have to testify what kind of hat I am wearing, it seems.

Because the NAM strongly supported the passage of the act and has a longstanding commitment to promoting competition in the marketplace, the association has a continuing interest in truck deregulation and is supportive of most of the results of the 1980 act.

In general, the trucking industry has responded well to the reforms of the Motor Carrier Act, demonstrating flexibility despite the impact of the recent recession. Indeed, the positive response of many carriers and their customers has contributed to the achievement of most of the act's objectives within a relatively short period of time.

The issue of pricing is of particular concern to the NAM. Even though single line antitrust immunity is not scheduled to expire until July 1, 1984, the trucking industry is in fact behaving as though the immunity had already ended. The benefits of marketplace pricing and increased price competition have accrued to some, but not all, shippers, truckers, and consumers for some time.

This is especially true with respect to truckload traffic. However, LTL or small shipments traffic has experienced far less good fortune. This point requires some elaboration.

Those truckload carriers which have responded to the changed marketplace have established innovative and cost-based rates, while at the same time maintaining or improving service levels. Most of this activity has taken place outside the protection of antitrust immunity afforded by the rate bureaus. Price-service options

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have proliferated, as envisioned by the drafters of the Motor Carrier Act.

Conversely, LTL traffic has remained largely under the control of the rate bureaus. Rates covering this traffic have risen far faster than the Wholesale-Producer Price Index, resulting mainly from general rate increases, but also from restructuring.

Elimination of antitrust immunity for general rate increases is necessary to end this inequity. In its June 1, 1983, report to the President and the Congress, the Motor Carrier Ratemaking Study Commission recommended "the prompt and complete elimination of antitrust immunity or collective ratemaking for all rates, for freight classification, and for related activities in the motor carrier industry." The Commission further recommended that this be implemented on July 1, 1984, the same date on which single line antitrust immunity will expire.

I do not know if you are going to ask me the question you asked before about timing and the compromise, but if you do I will cover that.

In view of the partial success of the Motor Carrier Act and the clear recommendations of the Study Commission, the NAM believes that legislation to complete the deregulation of the motor carrier industry is needed and should be enacted well before the July 1, 1984, effective date. The association and a broad coalition of trade groups, shippers and public interest organizations helped the Department of Transportation develop a bill proposal to accomplish these aims.

We are frankly disappointed that the administration has failed to send the bill to the Congress. Even though we have a commitment as far as the aims of the administration, we still do not have the bill. And I think that is what Mr. Brady was alluding to, in that we still need a document.

The CHAIRMAN. My hunch would be we will know by tomorrow morning whether the Assistant Attorney General was speaking for the administration or not.

Mr. WARREN. Yes, I think we will, too.

The CHAIRMAN. And if indeed he was, then I think we will have no trouble at least drafting a bill upon which we can all agree.

Mr. WARREN. It is essential to the health and stability of the trucking industry, shippers and consumers, that this remaining economic regulation of the industry be abolished as soon as possible. If the administration chooses not to forward such legislation, the Congress should take the initiative.

To this end, we strongly support today's statement of the coalition as read by Mr. Brady. The outline for legislation in that statement will serve to put these important issues before the Congress. If these legislative principles are enacted into law, the development of a strong and healthy trucking industry will result.

Along with the other members of the panel, we are prepared to support legislation to complete the job of trucking deregulation that was begun by this committee 3 years ago.

The NAM thanks you, Mr. Chairman, for the opportunity to present our views, and I will be happy to answer any questions.

The CHAIRMAN. You mention in your testimony that the less than truckload traffic rates have risen considerably, due to the fact

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that most of these rates are still set by rate bureaus. Do you think that the ICC has acted properly in allowing these rate increases?

Mr. WARREN. After the strong statement that Mr. Taylor made this morning, I hate to even criticize him, since we have gotten this kind of a statement. As it was commented here this morning, he has put his predecessor—made him almost a moderate.

I suspect that if the Commission had felt, and if the Congress had firmly directed that the Commission should be exercising a high degree of regulatory supervision over the process, then they should have been doing something about it. I tend to agree with the overall philosophy that Mr. Taylor has taken, that basically we are not going to look at this sort of thing and we will let it fly on the basis that we really are deregulating.

Under that kind of a philosophy, I suspect that what they did was right. This does not solve the problem, however. The problem is still there. The rate bureaus are still active, and they have been operating in a fashion that has been certainly far more inimical to the interests of the small shippers than to the large shippers.

That business that is moving under those bureau-controlled rates is driving certainly the Small Shipment Traffic Conference and everybody else who is involved with small shipments, including ourselves, to distraction. It is just an uncontrollable piece that is out there, that we are prevented from having competition truly work in the marketplace, and that should be corrected.

The CHAIRMAN. You heard the suggestion I have posed several times about a compromise bill. Let me ask you an either-or. Single-line immunity, of course, expires next July. Let us assume that I do not have the votes, whether it is here, the Senate or the House, to go any further than that, but that there might be the votes for a compromise to extend that date by a couple of years in exchange for sunsetting single line, joint line, and all other protections and regulations short of agreed-upon safety and insurance and fit and able and what-not.

Would you be amenable to that kind of a compromise?

Mr. WARREN. It depends on which hat I have on. I cannot really speak for the coalition. I have to go back and ask them what they felt about this, because this is a very key part of the issue.

I personally feel that the timing does not have to be extended for any practical reason. If for political reasons, in order to get the whole thing through, then I really would not have much problem with it, as long as the compromise was just that.

If we had total deregulation and if we had a fixed date in the future, then a year or 2 years so far as I am personally concerned would not make any difference.

The CHAIRMAN. I am not suggesting trading off an extension of single-line immunity for a hoped-for sunsetting in the future. It would have to be a package and firm and passed, and all of the parties going into it would have to agree as we went into it that we were going with the package. Otherwise we will just stay where we are.

Mr. WARREN. Under those circumstances, I personally do not have any particular problem with it as far as NAM. And the coalition, I would suspect they would not have any problem, but I would have to ask them.

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The CHAIRMAN. Let me pose the same question, if I might, to you, Mr. Hitchcock.

Mr. HITCHCOCK. Well, Senator, I am not sure I can speak for the particular organizations. It is a very serious proposal, which would have to be discussed by all the groups that are signing the statement. And we will pose it to them. Beyond that, I am afraid I cannot go into any more detail.

The CHAIRMAN. Tell me specifically why you believe, Mr. Hitchcock, that further deregulation is in the interest of consumers?

Mr. HITCHCOCK. Well, for several reasons. In the first place, you still have some of the general rate increases that Mr. Warren spoke about, which are continually being passed through, which do affect the prices the consumers ultimately pay. They are passed along to the consumers ultimately.

You also have some of the restrictions that still exist on entry, which add to the cost of government, add to the cost of services that consumers ultimately pay.

And I suppose as a student of government one wonders why there are still some of House bizarre regulations on the books, why it really benefits the public to say, for example, that you need a license to transport horses that are used for racing, but not horses that are used for pleasure riding. It certainly does not make much difference to the horse, I would imagine. But why does that type of regulation really benefit consumers? Why should tax dollars be spent in that particular fashion?

When trucking was partially deregulated back in 1980, there were estimates that partial deregulation would save $5 billion in the economy a year. Admittedly, transportation tends to be a hidden cost that consumers do not recognize, but $5 billion is a lot of money. As Senator Dirksen used to say, "a billion here and a billion there, and pretty soon you are talking real money." And that money is ultimately paid by the people who buy the products at the end of the line.

The CHAIRMAN. Gentlemen, thank you. I have no other questions. I appreciate your statement.

Next we will go to our next panel: Jim Edler, Mark Andrews, and Richard Velten.

Good morning, Jim. Jim Edler is also a member of the Motor Carrier Ratemaking Study Commission and has been as faithful as Mr. Warren in his duties and as staunch as Mr. Warren consistently.

STATEMENTS OF JAMES EDLER, CHAIRMAN OF MOTOR RATES AND PRACTICES—GENERAL FREIGHT COMMITTEE, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, ACCOMPANIED BY RICHARD D. FORTIN, LEAGUE COUNSEL; MARK J. ANDREWS, CHAIRMAN, LEGISLATIVE COMMITTEE, MOTOR CARRIER LAWYERS ASSOCIATION; AND RICHARD VELTEN, FIRST VICE PRESIDENT, NATIONAL SMALL SHIPMENT TRAFFIC CONFERENCE, JOHNSON & JOHNSON PRODUCTS, INC., ACCOMPANIED BY STEVEN PALISH, CONFERENCE ATTORNEY

Mr. EDLER. Good morning, Chairman Packwood.

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My name is James H. Edler. I am chairman of the Motor Rates and Practices—General Freight Committee of the National Industrial Transportation League. Accompanying me today is Richard D. Fortin, the league counsel.

Based on our members 3 years of experience under a more competitive regulatory environment, the league believes that the 1980 reform law is accomplishing the 96th Congress objectives, and that it has resulted in benefits to shippers, carriers, and the public.

As we have testified previously, the league believes that the economy, not the 1980 reform law, was responsible for the industry's poor financial performance during the past 2 years. A recent Business Week article analyzing this year's second quarter performance of all industries seems to buttress this point. According to the business magazine, while industry as a whole experienced an 8-percent increase in annual profits from 1982 levels, the trucking industry's profits were up an impressive 55 percent—making it the fifth best performer of all industries surveyed.

Mr. Chairman, I know you will be particularly interested in the fact that Yellow Freight System experienced a 349-percent increase in profits.

The CHAIRMAN. Have you talked with Mr. Murphy recently?

Mr. EDLER. He is not returning my phone calls.

In supporting the congressionally forged compromise that is contained in the Motor Carrier Act, the league recognizes that this measure is only the first step in the transition toward ending unnecessary Federal regulation of the trucking industry.

The CHAIRMAN. Let me interrupt you just a second. Did you say 349 percent?

Mr. EDLER. Yes, Mr. Chairman.

The CHAIRMAN. Over what period? I think I will call him this afternoon.

Mr. EDLER. 349 percent in its second quarter of 1983 versus second quarter of 1982.

The CHAIRMAN. Thank you. Go ahead.

Mr. EDLER. The league would like to outline how our members believe the Motor Carrier Act should be further improved to insure that the competitive objectives of motor carrier regulatory reform are fully realized. In the entry area, the league would urge the committee to consider whether there is a need to continue the public convenience and necessity standard in the granting of operating rights authority, as well as whether there is a need to make further improvements insuring that all unnecessary entry regulations are eliminated.

The league would support the recommendation that the fit, willing and able entry test be retained as the sole standard—eliminating the current public convenience and necessity test. We believe that this standard should require an applicant to show that he or she has secured the proper insurance and has a good safety record.

Analyzing the impact of the law's rate reforms cannot be done without first addressing the scope of the industry's ability to collectively set rates. At present, the league's policy on collective ratemaking suggests an inverse relationship between the ability to collectively set rates, on the one hand, and, on the other, the ability to price carrier services free of regulatory scrutiny. It implies that as

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carriers are allowed greater latitude in the pricing of their services, there should be a commensurate reduction in their ability to collectively set these prices.

Based on our experience under deregulation and after review of the recommendations of the Motor Carrier Ratemaking Study Commission, my committee has recommended to the league's officers and general membership that this policy be modified to support the elimination of the industry's antitrust immunity for collective ratemaking. This recommendation will be presented to the league at this November's annual meeting.

Another factor influencing my committee's recommendation is the ICC's handling of collective rate actions. During the past 2 years, the trucking industry filed more than 50 separate requests for general rate increases. The Commission has approved almost all of these requests. We are deeply concerned about the impact these increases are having on LTL shippers, since the bulk of these rate increases affect their traffic.

Since entry reforms do not benefit the LTL shipper to the same extent they do the truckload shipper, because of higher LTL entry costs, we believe that continued collective rate activity on this segment of traffic should be carefully scrutinized. In fact, the league recently supported a petition asking the Commission to end this type of ratemaking for shipments weighing less than 1,000 pounds.

In addition, the ICC is acting on general rate increases without resolving the controversy surrounding two key pricing issues—namely, how to determine the revenue adequacy of the industry and how to determine how to properly allocate platform costs associated with the handling of LTL shipments. The league has actively participated in these two major agency proceedings.

We would also urge that, to the extent the industry is permitted to set rates by general increase, this ratemaking technique be used only for cost recovery purposes. We believe that the needs of the industry and its consumers are better served if profits are pursued through individual pricing initiatives, rather than across the board increases which ignore the marketplace conditions affecting each commodity.

In conclusion, the league believes that the marketplace, not the Federal Government, continues to be the most effective regulator of competitive truck transportation services. Our experience under today's more competitive regulatory environment demonstrates that shippers and carriers can find effective private sector solutions to their business problems.

We thank you for this opportunity to present our views. We look forward to working with this committee to continue to enhance the competitiveness of the trucking industry through the elimination of unnecessary Federal Regulation. We stand ready to answer any questions you may have.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES H. EDLER, THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Chairman Packwood, members of the committee, my name is James H. Edler. I am chairman of the Motor Rates and Practices—General Freight Committee of The

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National Industrial Transportation League. Accompanying me today is Richard D. Fortin of League counsel.

The National Industrial Transportation League is a voluntary association of 1,800 shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, freight, and transportation services of all modes. It is the only nationwide organization representing all types of shippers using all modes of transportation to move all types of commodities. Our members, directly or indirectly, are responsible for the routing of 80 percent of our country's commercial freight.

The League's primary concern is to assure that our national transportation system is sound, efficient, well-managed, and privately owned and operated, and that it meets the needs of the nation as well as the needs of shippers and receivers of commercial freight. To arrive at the policies and positions reflecting our broad range of interests, League members, at least annually, consider, debate, and vote on pertinent transportation issues. Throughout our more than 75 year history, the League frequently has been the spokesman for business and industry on transportation matters.

The League is a strong supporter of reforming the federal regulations governing the trucking industry. We were active in seeking the passage of reform legislation, and in participating in the Interstate Commerce Commission's implementation of the Motor Carrier Act of 1980.

Based on our members' three years of experience under a more competitive regulatory environment, the League believes that the 1980 reform law is accomplishing the 96th Congress' major objectives, and that it has resulted in benefits to shippers, carriers, and the public. The increased competitive flexibility created by reform has allowed shippers and carriers to explore price and service options tailored to meet today's economic conditions. Without this flexibility, the League believes that the recession would have had a more severe impact on U.S. producers and the jobs they generate to meet the demands of our nation's commercial needs.

As we have testified previously, the League believes that the economy, not the 1980 reform law, was responsible for the industry's poor financial performance during the past two years. A recent Business Week article (August 15, 1983. pp. 51–76) analyzing this year's second quarter performance of all industries seems to buttress this point. According to the business magazine, while industry as whole experienced an 8 percent increase in annual profits from 1982 levels, the trucking industry's profits were up an impressive 55 percent—making it the fifth best performer of all industries surveyed.

When the figures were compared for second quarter performance, the profits were even more impressive—an 81 percent improvement over 1982 levels. The recovery for certain trucking companies from the second quarter of 1982 are even more startling. Yellow Freight experienced a 349 percent increase, while Arkansas Best's profits jumped 169 percent over those generated during the second quarter of 1982. As the economy continues to recover, the League believes that the profitability of this industry will continue to rise. We are convinced that the flexibility created by the Motor Carrier Act fostered the market environment which resulted in what appears to be the trucking industry's remarkable recovery.

In support the Congressionally forged compromise that is contained in the Motor Carrier Act, the League recognizes that this measure is only the first step in the transition toward ending unnecessary federal regulation of the trucking industry. We agree with this Committee's assessment, made at the time the Motor Carrier Act was passed, that further changes to this law would be needed based upon experience gained through allowing a greater play of market forces.

The League would like to outline how our members believe the Motor Carrier Act should be further improved to ensure that the competitive objectives of motor carrier regulatory reform are fully realized.

In the entry area, the League would urge the committee to consider whether there is a need to continue the "public convenience and necessity" standard in the granting of operating rights authority as well as whether there is a need to make further improvements ensuring that all unnecessary entry regulations are eliminated.

The League would support the recommendation that the "fit, willing, and able" entry test be retained as the sole standard—eliminating the current "public convenience and necessity" test. We believe that this standard should require an applicant to show that he or she has secured the proper insurance and has a good safety record.

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We also would urge the committee to review the entry reforms contained in the 1980 law to assure that the pro-competitive goals of the reform effort are continued throughout the phased elimination of all unnecessary federal regulation.

Analyzing the impact of reform law's rate reforms cannot be done without first addressing the scope of the industry's ability to collectively set rates. At present, the League's policy on collective ratemaking states: "The carriers should be subject to all antitrust laws, except wherein they are conducting their affairs in accordance with the national transportation policy, and in acordance with the rules and regulations prescribed by the Interstate Commerce Commission.

"As carriers obtain additional rate freedom to establish their prices and charges, there should be a counterbalancing reduction in the antitrust immunity provided in their ICC-approved rate bureau agreements.

This policy was formulated when shippers were trying to anticipate what would be the effects of the 1980 reform law. Accordingly, the policy was designed for flexibility to ensure that it addressed a wide range of possible results. It suggests an inverse relationship between the ability to collectively set rates, and the ability to price carrier services free of regulatory scrutiny. It implies that as carriers are allowed greater latitude in the pricing of their services, there should be a commensurate reduction in their ability to collectively set these prices.

Based on our experience under deregulation, and, after review of the recommendations of the Motor Carrier Ratemaking Study Commission, my committee has recommended to the League's officers and general membership that this policy be modified to support the elimination of the industry's antitrust immunity for collective ratemaking. This recommendation will be presented to the League at this November's Annual Meeting.

Another factor influencing my committee's recommendation is the ICC's handling of collective rate actions. During the past two years, the trucking industry filed more than 50 separate requests for general rate increases. The Commission has approved all but a handful of these requests. Although the amounts sought in the majority of these rate requests varied according to weight and whether the movements were made in truckload or less-than-truckload lot sizes, the increases sought in each request generally ranged between 2% to about 10%.

We are deeply concerned about the impact these increases are having on LTL shippers, since the bulk of these rate increases affect their traffic. Since entry reforms do not benefit the LTL shipper to the same extent they do the truckload shipper, because of higher LTL entry costs, we believe that continued collective rate activity on this traffic segment should be carefully scrutinized. In fact, the League recently supported a petition asking the Commission to end this type of ratemaking for shipments weighing less than 1,000 pounds.

In addition, the ICC is acting on general rate increases without resolving the controversies surrounding two key pricing issues—namely, how to determine the revenue adequacy of the industry; and, how to determine how to properly allocate the platform costs associated with the handling of LTL shipments. The League has actively participated in the two major agency proceedings on these issues. We believe that the ICC should be directed to resolve these issues, which are critical to determining and monitoring the health of this important segment of our national transportation system.

We also would urge that, to the extent that the industry is permitted to set rates by general increase, this ratemaking technique be used only for cost recovery purposes. We believe that the needs of the industry and its consumers are better served if profits are pursued through individual pricing initiatives, rather than through across-the-board increases which ignore the marketplace conditions affecting each commmodity.

The Commission recently issued a report affirming this belief. In its August 26 report in Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers Since the Motor Carrier Act of 1980,* the agency found that "The (carriers') new pricing practices have greatly benefitted the shipping public and have led to increased carrier efficiency and heightened market sensitivity." The pricing practices contained in the Commission's remarks are the result of independent actions, not collective ratemaking.

In conclusion, the League believes that the marketplace, not the federal government, continues to be the most effective regulator of competitive truck transportation services. Our experience under today's more competitive regulatory environment demonstrates that shippers and carriers can find effective private-sector solutions to their business problems.

We thank you for this opportunity to present the views of shippers. We look forward to working with this Committee to continue to enhance the competitiveness of

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the trucking industry through the elimination of unnecessary federal regulation. We are now ready to answer any questions you may have.

The CHAIRMAN. Thank you.

Mr. Andrews.

Mr. ANDREWS. Good morning, Mr. Chairman.

My name is Mark Andrews. I am an attorney here in Washington. I speak on behalf of the Motor Carrier Lawyers Association, which is a specialized bar association with members throughout this country who have hands-on experience in representing and counseling motor carriers, not just before the ICC—that is a small part of it these days—but in all kinds of matters.

We have heard the ICC Chairman state earlier on the record that he regards much of what his agency is doing in the area of motor regulation these days as a sham and a lot of nonsense. Based on our experience, we regrettably have to agree with the Chairman. But I am afraid, Mr. Chairman, that we draw very different conclusions from that than does the Chairman.

We are very concerned, as was the Senator from South Dakota, about the hidden impact the ICC's present administration of the 1980 act may be having on small towns. We listened very carefully to the testimony this morning. There was some indication that perhaps a small percentage of the people surveyed by the ICC and the Department of Transportation in small towns saw some increase in the number of carriers serving them.

The hidden converse of that, of course, is that the great majority saw no increase and a few of them saw a decrease. I would ask, then, where are all these thousands of new carriers the ICC says it has let into the industry? I submit that, even if some small town shippers perceive no decline in the service available to them, the gap between what is available to them and what is available to the larger industrial centers is quite probably growing as a result of this legislation.

A similar conclusion can be inferred from certain Department of Transportation studies about the impact of the Commission's implementation of the 1980 act on rates in small towns. A small percentage of the shippers interviewed by the DOT said maybe there has been a decrease in rates, but again the great majority, as DOT itself indicated in these studies, the great majority saw no decrease in rates or saw an increase in rates, and the DOT itself noted this was in contrast to nationwide returns that showed on the whole rates had gone down.

Again, the gap, we suspect, is increasing between small town shippers and big city shippers as to rates as well as service.

Now, I also heard the Chairman talking about the recent glimmers of financial recovery in the industry. But I also heard him say that the ICC no longer collects statistics on how the smaller carriers are doing. I have no doubt the big carriers, some of whom I represent, are doing just fine. They can take care of themselves under any environment. My concern is with what is happening to the smaller carriers who have made the trucking industry a uniquely competitive industry throughout its history.

And in that regard, let me just tell you about one carrier I represent. To preserve client confidences, let me just say that he started out to be basically in the food business. He is in Missouri. Histori-

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cally, he had to have a private fleet to meet the service demands that his supermarket customers placed on him.

Historically before 1978, once his private fleet delivered the food products they could not get anything to haul back because the ICC had a rigid rule that private carriers could not have for-hire authority. Now, that was an inflexible rule. That kind of inflexibility clearly was bad.

He took advantage of the ICC's changes in policy to get some for-hire trucking authority to serve other shippers on those back hauls in the past few years, and for a while everything went fine. More recently, however, he tells me he is back again to a situation where more and more of his trucks coming back are now running empty. And the reason is, no matter how low he cuts his rates, there is always someone out there in desperate straits who is willing to cut it lower. There is a point beyond which he cannot go——

The CHAIRMAN. Is that bad?

Mr. ANDREWS. Well, I submit—if I could continue, Senator, I submit it is bad, because I have had to counsel him that, even though these other people are putting in below-cost rates, are doing it without tariffs, I have had to counsel him he has no remedy at the ICC. The ICC will not help him, because today the ICC is just as rigid in letting everything go according to the marketplace as it was in the old days in imposing artificial restraints.

The CHAIRMAN. What would you counsel him if we entirely removed regulation of motor carrier movements?

Mr. ANDREWS. I would, of course, have to counsel him that there probably is no legal remedy available to him. Even the theoretical remedies that exist today would be gone. He would be just as badly off as he was in the old days.

It seems to me somewhere between those two extremes that I have tried to describe to you there is a role for the ICC to play. I certainly cannot counsel him to cut his rates below cost. I cannot counsel him to compromise service to his affiliated shipper for whom he went into the trucking business in the first place. I cannot counsel him to cut his safety expenditures below the minimum necessary to make sure his brakes work and he is not endangering other people on the roads.

So it is a very difficult question that you pose, Senator, and taking away the remedies that are in the statute today certainly is not going to help him. And I think as long as those remedies are on the books, they are available to a commission that perhaps might in the future be more inclined to enforce the act as written, and if they are gone, that shipper, that carrier and many others, I submit, are going to be in a very bad way.

[The statement follows:]

STATEMENT OF MARK J. ANDREWS, CHAIRMAN, LEGISLATIVE COMMITTEE, MOTOR CARRIER LAWYERS ASSOCIATION

The Motor Carrier Lawyers Association [MCLA] appreciates the Committee's invitation to participate in these critically important hearings. We value this opportunity to help advance the serious purposes for which these hearings were ordained under section 3(b) of the Motor Carrier Act of 1980 ("1980 Act"). Those purposes are twofold:

(1) "To ascertain the effects of" the 1980 Act on the motor carrier industry; and

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(2) To "ensure" that the 1980 Act "is being implemented according to Congressional intent and purpose."

MCLA, a non-profit, specialized bar association founded in 1937, believes it is uniquely well situated to help advance both of these inquiries. Far from being a small coterie of Washington specialists, MCLA has approximately 500 active members in the United States and Canada who represent motor carriers and their customers, suppliers and employees before the courts, the ICC, and other regulatory bodies at all levels of government. Most of our members also represent a variety of other clients both related and unrelated to transportation. In recognition of the increasingly broad range of member lawyers' interests and perspectives, MCLA's Executive Committee recently has voted to change the name of the organization to Transportation Lawyers Association, subject to general membership approval at a meeting in October, 1983. Through publications and two continuing legal education programs each year, MCLA strives to help its members discharge the full range of their professional responsibilities to clients.

Thus MCLA's perspectives on the effects of the 1980 Act, and on whether Congressional intent has been implemented, are not merely theoretical. They derive from day-to-day counseling and representation of motor carriers, and from day-to-day observation of how the 1980 Act has been administered (or non-administered) by the Interstate Commerce Commission [ICC]. Our testimony will address the "effects" and "intent" issues in that order. As will be seen, however, the two issues are ultimately inseparable because the alarming condition of today's motor carrier industry relates directly to the ICC's failure to implement Congressional intent.

Moreover, it is not just the motor carrier industry and related interests which accuse the ICC of nonfeasance. To an ever-increasing extent, similar charges are being leveled by shippers as well as carriers. Nor do the complaints relate solely to the ICC's performance under the Motor Carrier Act of 1980; its handling of coal rates, boxcar deregulation, route closings and other matters under the Staggers Rail Act of 1980 recently came under intense shipper criticism before this same Committee. Thus, while many of the points made herein have been raised at oversight hearings in prior years, we hope and trust the Committee will view the ICC's nonperformance with renewed urgency this year. The problem goes far beyond one or a few ICC decisions with which various interested parties disagree; what we are seeing instead is a pervasive failure or refusal to use those regulatory tools which Congress purposefully left in the ICC's hands when the 1980 legislation was enacted.

CONDITION OF THE INDUSTRY

Because we are lawyers rather than economists, we will defer to labor and industry witnesses for a detailed portrait of the once-prosperous motor carrier industry as it stands today. However, several current features of the trucking scene are, we think, beyond serious dispute.

First, the economic health of the industry has eroded alarmingly. Overcapacity abounds [1] at a time when tonnage, revenue, profits and return on equity have sharply declined.[2] The ICC and the Department of Transportation [DOT] keep saying these declines result mainly from the recession, but the beginning of the industry's downturn coincides with substantial ICC deregulation by administrative fiat in 1978,[3] not with the beginning of the recession in 1980.[4]

The industry's economic distress has been accompanied by clear signs of accelerating market concentration, especially in the general-freight trucking sector.[5] Gener-

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[1] *See, e.g.*, House Doc. 97-87, Oversight—Motor Carrier Act of 1980, pp. 82-83 (1982) (testimony of Bennett C. Whitlock, Jr. for American Trucking Associations, Inc. before the surface transportation subcommittee of the House Committee on Transportation and Public Works). The fact that at least "short-run excess capacity" exists in the trucking industry today is explicitly acknowledged in the ICC's September 13, 1983 report in Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property, at p. 13.

[2] *See*, generally, statement of Irwin H. Silberman before this Committee dated December 14, 1982 (hereafter, "Silberman testimony"). To our knowledge the analysis by Mr. Silberman, a private economic and financial consultant, has not been seriously challenged.

[3] Silberman testimony, pp. 5-12, 19-24. For the ICC's own description of administrative deregulation in the late seventies, *see* Ex Parte No. MC-121 *Policy Statement on Motor Carrier Regulation*, 44 Fed. Reg. 60296, 60297-99 (October 19, 1979).

[4] The current economic recession is generally understood to have begun in 1980. *See, e.g.*, industrial production data from Federal Reserve Board *Bulletins* cited at p. 86 of House Doc. 97-87, *supra* (testimony of Bennett C. Whitlock, Jr.).

[5] It is estimated that the market share of the ten largest motor carriers increased from 34.7 percent in 1976 to 42.0 percent in 1982 (Silberman testimony, p. 26), and that these carriers' share of the industry's after-tax ordinary income increased from 46.1 percent in 1976 to 83.6 percent in 1981 (*id.*, pp. 20, 22).

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al-freight truckers make heavy investments in terminals, specialized communications facilities, and other difficult-to-duplicate service features in order to specialize in handling relatively small shipments for a broad spectrum of large and small shippers. Of all trucking sectors, this is the closest to the classic concept of a public utility. Yet these providers of essential service for general freight have been dying by the dozens [6] and they are not being replaced. To MCLA's knowledge only one major new general-commodity small-shipment carrier (Leaseway Express) has emerged since 1980.[7] This increased market concentration mocks the procompetitive goals of the 1980 Act.

Moreover, the carnage among existing carriers has not been limited to the general-freight sector. MCLA made a request to the ICC under the Freedom of Information Act for a list of all motor carriers under its jurisdiction which, according to its records, have discontinued operations since July 1, 1980. MCLA is submitting as Attachment A [8] hereto a summary of the ICC response, in the form of a printout listing 1,159 motor carriers of property moved to "inactive" status in the ICC's own records during the period July, 1980 through December, 1982. The printout is organized by the carriers' states of domicile for the convenience of the Subcommittee, its members and staff. I might note that many carriers who are in fact out of business (including at least one client of mine) are not included in this list because they have kept up their insurance and other basic filings (the probable bases for the ICC's "active" and "inactive" classifications) in hopes of reviving or selling their businesses.

These trends have continued in 1983. Random perusal of three recent weekly issues of "Traffic World" reveals a total of 83 carriers that either are voluntarily surrendering their rights or are being cited by the ICC for failure to maintain insurance.[9] Projected on an annual basis, the motor-carrier failure rate thus continues at a level of at least 1,400 per year.

Whatever the precise numbers involved, it seems clear that while some thousands of new carriers of unascertained size and competence may have come into the industry since 1980 (according to the ICC),[10] many of those new entrants already have exited along with an alarming number of established general-freight firms. We question whether the framers of the 1980 Act intended to introduce such rampant instability into the motor-carrier portion of this country's infrastructure. Interestingly, no such failure rate among carriers is reported by our members in Canada, whose recession has been at least as severe as ours, but whose motor carriers are still subjected to meaningful economic regulation.[11]

Furthermore, the vaunted benefits of increased motor carrier "competition," including rate discounting, have by no means been distributed evenly across the landscape. According to DOT studies that purport to assess small-community service impacts of the 1980 Act (as currently interpreted by the ICC), the great majority of small-town and rural shippers surveyed continue to report rate increases, "in contrast with national returns which indicate that on balance the post-Motor Carrier Act period has seen rate reduction." [12] This suggests that uncontrolled rate discounting is increasing the rate disadvantages of rural vis-a-vis urban shippers.

Similarly, it is far from clear that rural shippers are experiencing any increase in the number of carriers serving them, notwithstanding any increase in the number of ICC-authorized carriers nationwide. While on DOT study does claim an "apparent net gain in the number of carriers serving rural communities" in the Southeast [13]—

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[6] At least 63 general-freight motor carriers included in the Silberman testimony's data base went out of business between January 1, 1979 and November 1982. They had represented an estimated 14.10 percent of general-freight industry revenues in 1978. Silberman testimony, p. 27.

[7] Even DOT admits that "new entries into the motor carrier industry following the passage of the MCA were mainly into the sector of the Industry specializing in transportation of [truckload] shipments" rather than the less-than-truckload freight typically handled by the general-freight trucker. *See* "Effects of Regulatory Reform on Motor Carrier Failures: A Preliminary Assessment" (July, 1982), at p. 3.

[8] Attachment A has been retained in committee files.

[9] *See* Traffic World Issues of August 22, September 5 and September 12, 1983, at pp. 45–47, 47 and 44 respectively.

[10] *See, e.g.,* House Doc. 97-87, *supra,* at p. 333 (testimony of Chairman Taylor).

[11] *See, e.g.,* Comments of Ontario Section, Canadian Highway Transport Lawyers' Association, on Interim Report of Ontario Public Commercial Vehicles Act Review Committee (December, 1982), p. 10.

[12] *See* DOT paper entitled "Follow-up Study of Shipper/Receiver Mode Choice in Selected Rural Communities, 1980–1981," (September, 1982), at p. 14.

[13] "Follow-up Study," *supra,* p. 7.

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albeit without any consideration of what kind of carriers might have been gained and lost—another DOT study makes no showing of any increased quantum of carrier "competition" in the Oregon and Nevada communities it examines.[14] To the extent small-community markets have not been entered by additional carriers, such communities have suffered disproportionately from the high failure rate among established general-commodity carriers discussed earlier. Thus, there appears to be a widening gap between the rates and service available in smaller trucking markets as opposed to the rates and service available in larger, easier-to-serve markets.[15]

We do not share the ICC's apparent unconcern about the existing instability and high rate of business failures in the motor carrier industry, as expressed in the agency's September 13 report in Ex Parte No. MC-166, "Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980" (hereinafter, "MC-166"). There the ICC makes the timeworn argument that all we are seeing in a winnowing out of "inefficient" carriers (p. 9),[16] primarily as the result of "recently adverse economic conditions" (p. 8). At the same time, however, a more novel and revealing argument is advanced (pp. 8, 9):

"More importantly, we do not view carrier instability, *per se*, as something that should be avoided at any cost. * * * Thus, in essence, Congress acknowledged the benefits of a certain degree of instability."

Wholly aside from the question of whether Congress intended any such thing (see next section), we wonder how the Commission can advance this proposition so cavalierly in view of its own summary of the testimony by shipper participants in MC-166. The consensus of those shippers, notwithstanding the ICC's vaunted concern with price competition, is that service is their "primary concern" and "of primary importance" (MC-166 report, Appendix D, pp. 3, 4). Moreover, not all shippers are as well able to withstand instability in the motor transportation infrastructure shippers who participated in MC-166, 67.9 percent of which (19 out of 28) are "Fortune 500" companies, (*Id.*, Appendix E, pp. 3-4).

LEGISLATIVE INTENT

MCLA does not suggest that the deplorable industry conditions described above represent direct effects of the 1980 Act itself. No one can know what the effects of that legislation would be until it is implemented as Congress intended. In our view, todays conditions in the motor carrier industry result from the ICC's failure to implement Congressional intent in three principal areas—enforcement of the common carrier obligation; enforcement of entry standards, especially as to safety and fitness; and enforcement of ratemaking standards so as to maintain a minimum level of financial responsibility and economic stability in this vital industry. In each of these areas, and in others as well, the Commission's general approach has been to delay and ultimately to avoid deciding questions of vital importance to the industry and the shipping public.

With regard to the common carrier obligation, the ICC initially proposed a major reexamination of all sides of the question in Ex Parte No. MC-177 Sub-3, instituted January 27, 1981. The industry was led to expect issuance of new guidelines and standards in light of the 1980 Act. After a full round of briefs and oral argument, however, the proceeding languished for more than two years until March 15, 1983, when the ICC finally issued a notice determining "that there is no need to address to shippers and motor carriers provided by the March 15 notice consisted of two sentences as follows (at page 2):

"A common carrier is not in violation of its obligations if it declines to provide service within the scope of its operating authority because such service is economically or operationally impracticable in the circumstances at the time of the service

[14] *See* DOT paper entitled "A One-Year Assessment of the Motor Carrier Act of 1980: Small Community Trucking Service in Nevada and Oregon" (November 30, 1981).

[15] In its "Nevada-Oregon Study," *supra*, DOT attempted to prove that general-freight truck service is relatively unimportant to small communities. This paper studied the service needs of certain desert communities having virtually no industry. Even in these communities, however, "reported" and "primary" usage of general-freight truckers ranked ahead of every other mode except private trucking and small package carriers (*id.*, pp. 19, 39). Moreover, the DOT's "Follow-Up Study," *supra*, n. 11, recognized (at p. 54) that small communities having a greater degree of industrialization will have greater dependence on regulated carriers of less-than-truckload freight. The same study further recognized (at p. 27) the possibility that carrier service in small towns might well be "withdrawn" at the "end of the economic slowdown . . . in favor of more lucrative markets."

[16] In actual fact, no one has proven that the hundreds of failed carriers in recent years were all "inefficient," as opposed to merely being small carriers with resources insufficient to withstand recent economic pressures.

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request. To the extent that prior Commission decisions may have spoken of an absolute duty to provide service to the breadth of the operating certificate, those cases are overruled as inconsistent with law and policy."

The clear import of this expression by the ICC is that carriers may determine on their own what service is convenient for them to provide, untempered by any considerations of public interest in maintaining essential services.

The ICC has displayed similar passivity with regard to carrier safety and fitness. For example:

(1) The Commission has deleted rules requiring applicants for motor carrier authority to submit basic evidence of their financial condition, safety programs and the feasibility of their proposed operations. See Ex Parte No. 55 Sub-43, 45 Fed. Reg. 86780, 86782-83, 86790, December 31, 1980. Instead, even when the applicant has no previous experience as a motor carrier, the Commission is now satisfied with a bare, one-sentence assertion that the carrier has "access" to and is "familiar" with DOT safety regulations. See 49 CFR 1160.6, 1160.8.

(2) The Commission has continually forced broad authority on carriers who had explicitly stated they were in no position to provide such service and did not want the authority. This has happened as recently as March 2, 1983 in a decision entitled "CDB Incorporated, Extension—Texas" (No. MC-143776 Sub-34, unreported). Notwithstanding the clear admonition by the Fifth Circuit in *American Trucking Association* v. *United States,* that the ICC under no circumstances should force "Procrustean" authority descriptions on unwilling carriers (659 F.2d 452, 472 (1981)), the Commission's latest rulemaking notice in this area still would force many applicants to accept unwanted bulk-commodity authority, and still would allow ICC rejection of authority proposals giving "the appearance" of being "designed to satisfy * * * litigative interests" (Ex Parte No. MC-142 notice served August 8, 1983, at pp. 11-12, 16). How odd it is that the ICC apparently views avoidance of litigation as a bad thing, and is unwilling to let carriers design their own operating authorities by reference to "market forces" in which the agency places such great faith for almost all other purposes.

(3) The Commission has failed to take full advantage of existing computerized communication links with the safety enforcement arm of DOT, instead confining routine ICC checks of DOT safety records to cases involving temporary as opposed to permanent authority. Compare pages 1-2 with pages 2-3 of a Memorandum of Understanding executed by ICC and DOT under date of September 6, 1982. The Chairman of the ICC recently acknowledged, in his June 14, 1983 testimony before this Committee on S. 1108 (at page 5), that unless DOT files a "petition," the applicant carrier's DOT safety rating will not routinely be considered in a permanent authority case.

With regard to motor carrier financial condition and rate structure, the pattern has been the same:

(1) The ICC allowed a reopened inquiry into desirable motor carrier rates of return to languish for more than four years. Specifically, the agency's November 27, 1978 decision in Investigation and Suspension Docket M-29772, "General Increase Southern Motor Carrier Rate Conference, April, 1978" was stayed by the D.C. Circuit in *S.M.C.R.C.* v. *United States,* No. 78-3317, and remained pending before the ICC on administrative appeal until July 28, 1983, when the agency once again decided, in essence, that no standards or guidelines were necessary.

(2) The ICC has repeatedly refused to consider requests by industry and labor groups for establishment of standards or guidelines governing the recent wave of motor carrier rate discounting. See, for example, dismissal orders in docket No. 38872 (American Trucking Associations), decided September 27, 1982; No. 38724 (International Brotherhood of Teamsters), decided April 15, 1983; and No. 38766 (Owner-Operator Independent Drivers Association), decided April 15, 1983.

(3) In the MC-166 proceeding discussed previously, the Commission initially voted to issue a definitive policy statement, but subsequently renounced any such intention in a notice published 47 Fed. Reg. 49481 (November 1, 1982). As the Commission's then Vice Chairman pointed out in a separate expression issued that date (47 Fed. Reg. 49483):

"Reversal of the Commission's prior vote and commitment to developing a formal policy statement means that the Commission is now left with a highly ambiguous proceeding leading nowhere in particular. Such an amorphous proceeding only invites characterization as a 'make-work' effort designed to soothe emotions and demonstrate that the Commission is 'doing something' (although not much)."

Indeed, the proceeding has led "nowhere in particular", as is illustrated by the September 13 "report" which, once again, declines to adopt any pricing standards or guidelines.

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In defense of these decisions and non-decisions, the ICC is fond of citing those portions of the 1980 Act legislative history which indicate a Congressional desire for greater reliance on marketplace forces (see, e.g., MC-166 report, p. 9n. 6). On the other hand, the legislative history also contains admonitions that the 1980 Act was intended to occupy "a middle ground between continuing the status quo on the one hand, and total deregulation on the other hand";[17] that authority is to be granted to a carrier only when it is shown "likely to be a safe operator";[18] and that the statute "continue[s] to provide for the common carrier obligation"[19] to mention only a few passages confirming that Congress intended to liberalize motor carrier economic regulation but not to trivialize it.

The fact of the matter is that Congress expressed many intents in enacting this legislation. If any one of these goals is carried to an extreme, it will doubtless interfere with realization of other such goals. MCLA believes Congress knew this, and for that very reason expected the ICC to harmonize these goals through use of administrative expertise and discretion. In other words, Congress provided the Commission with a keyboard of policy goals and means to effect those goals—but the ICC insists on sounding but one note. we submit that the administrative discretion entrusted to the ICC is not being exercised when the agency uniformly resolves all doubts in favor of non-regulation and uniformly grants every operating rights application, every common-control exemption petition, and every contract-carrier tariff-filing exemption to come before it (assuming the applicant has followed the proper format and sent in any required filing fee).

Under these circumstances it is no wonder that the carriers themselves have now been joined by significant shipper groups in decrying the ICC's nonfeasance.[20]

CONCLUSION

In an era of strict budgetary constraints, some may ask: "What is so special about the trucking business that it should be protected by any governmental economic regulation at all?" Our answer is this: the ultimate object is not to protect the truckers, but to protect all the people who depend on trucks and share the roads with them. To an unparalleled degree, trucking firms serve the public in public. When my family and I go to the grocery store or the toy store or the department store, we save money when the store has stable, predictable, dependable transport services giving it access to a variety of competitive suppliers nationwide. At the same time, we would like to have some assurance that the motor carriers whose vehicles we encounter on the road to the store can afford to maintain their tires and brakes, train their employees, and pay their drivers enough so they won't be tempted to cut corners. It is surprising that people alarmed by the prospect of slightly longer, heavier and wider trucks (pursuant to the Surface Transportation Assistance Act of 1982) are not here expressing similar concerns for preserving orderly market conditions in the trucking industry. It is surprising that the reasonable economic regulation for which we contend is not recognized, for the above reasons, as also constituting health and safety regulation in the broadest and best sense.

Granted, trucking—or at least most of its sectors—cannot be said to fit the classic mold of a public utility. Trucking is not a natural monopoly and, in most sectors, has few inherent barriers to entry (though tendencies toward undue concentration do exist). Trucking regulation, however, originated precisely because excessive ease of entry led to disorderly markets.[21] The framers of trucking regulation recognized, I think, that the last ounce of "competition" in a totally unregulated trucking industry could be purchased only at the expense of less competition in the rest of the economy, as unstable and unreliable transportation kept shippers from competing in distant markets. In an era when we are trying to make the United States economy more competitive in world trade, let us not forget that the sheer size and scale

[17] S. Rep. No. 96-641, 96th Cong. 2d Sess. 1-2 (1980).

[18] *Id.*, at 5.

[19] 126 Cong. Rec. 5351 (1980) (remarks by Congressman Shuster as floor manager for what became the 1980 Act).

[20] *See, e.g.*, "Total Deregulation v. Sloppy Regulation" (editorial on page 2 of weekly *Traffic World* for August 22, 1983), discussing recent change of position on collective ratemaking by the National Small Shipments Traffic Conference (NASSTRAC) because of asserted ICC failure to regulate general rate increases. While MCLA takes no position on NASSTRAC's specific proposals, NASSTRAC's complaints further illustrate the ICC's nonfeasance. The Shippers National Freight Claims Council has come forward with a "manifesto" expressing similar regulatory concerns; see weekly *Traffic World* issue of July 11, 1983, at p. 11.

[21] *See* discussion by Supreme Court in *American Trucking Associations, Inc.* v. *United States*, 344 U.S. 298, 312 (1953).

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of our continental economy is one of our basic, inherent advantages. A weakened trucking industry weakens the sinews of that continental economy. MCLA thinks that reasonable economic regulation of trucking, in accordance with the intent of the 1980 Act has a role to play in preventing further hemorrhaging of this vital industry.

Evidently the ICC's "game plan" in the recent past has been to divest itself, by administrative fiat, of the vital areas of regulatory responsibility Congress retained in the 1980 Act as outlined above. As remedies for the ICC's nonfeasance, we urge several things. First, the Congress must scrutinize the philosophies and intentions of future ICC nominees with greater care, to ascertain that nominees intend to exercise discretion in balancing the various policy goals of the 1980 Act. Secondly, it may be desirable to re-emphasize the ICC's position as an arm of Congress rather than the Executive, perhaps by re-examining Reorganizations Plan No 1 of 1969 with a view to returning to the ICC greater control of its internal organization. Most of all, this Committee must directly express to the ICC its determination that the agency will perform its statutory functions with respect to the common carrier obligation, fitness, and ratemaking standards in a reasonable, balanced manner.

Thank you.

The CHAIRMAN. Mr. Velten.

Mr. VELTEN. Good morning. My name is Richard Velten, and I am an officer both in the National Small Shipments Traffic Conference and the Drug and Toilet Preparations Traffic Conference.

On my right is Steve Palish, who is our conference attorney.

These shipper groups are comprised of over 300 companies and our common bond is that we ship large volumes of LTL shipments; in particular, shipments under 1,000 pounds. Small shipments is just where we live.

We appreciate the opportunity to express our views here this morning.

The relaxed entry controls of the Motor Carrier Act of 1980 continue to work well. We are generally satisfied that we can add new carriers as needed and on an expedited basis. It is a fact that the vast majority of new operations have been truckload-oriented, since there is a large capital outlay involved in an LTL operation.

We are not faring so well in rate regulation. In fact, it is a disaster for us. The ICC is not following the mandate of the Motor Carrier Act of 1980 as it exists today in the area of regulating carrier rates. Chairman Taylor just testified to that.

Now, you folks in Congress did not change the basic standards of legality for motor carrier rates that they be just and reasonable, and nor did you change the Commission's responsibility to review rate changes for conformity to the act.

Other interests will tell you that there is no effective floor on rate reductions today, but our ox is being gored by the fact that the Commission refuses to acknowledge that rate increases can be unreasonably high in today's climate.

During the past year and a half the Commission has approved in total every general rate increase put up by the bureaus, regardless of how inequitable. In that period, the last 18 months, there have been rate increases on small shipments of over 30 percent.

This spring the Commission refused to suspend or investigate general rate increases by the nine major motor rate bureaus totaling some $800 million per year. The largest share of this increase fell upon small shipment traffic. And it is a fact that in these general increases every bureau proposed a greater increase on small shipment traffic than for the truckload shipments.

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This disproportionate application was made in spite of the fact that the expense increases claimed by the bureaus were not greater for small shipments than they were for large shipments. The provision of the act prohibiting unjust discrimination against types of traffic has been administratively nullified when the Commission allows carriers to earn profits for interest in taxes of 20 cents on the revenue dollar of small shipments while they are losing 20 percent on the revenue dollar on truckload shipments.

Today's commissioners are avid deregulators. They believe that there is no need for them to regulate rates. We have heard that this morning.

First off, this is a decision for Congress to make and not the commissioners. And more importantly, right now there continues to be an urgent need for shippers of small shipments that the Commission scrutinize and regulate general rate increases. And their reason is the rate bureaus—as a practical matter, the carriers through their bureaus are collectively setting the general rate increases on LTL freight. Faced with dwindling truckload volume and an increase in truckload competition, they have been channeling exorbitant increases on the LTL market. After all, this market is largely captive. Shippers of LTL have few viable alternatives to turn to other than the bureau carriers.

Now, you are going to hear during this session that the LTL shippers are getting discounts and that few pay full tariff rates for LTL distribution. It is true that discounts are widespread, but they are a product of the type of shipment you are making, the size of the shipment, the traffic lanes involved, and overall, the clout of the individual shipper.

If your freight is desirable and the routes you are using are heavily traveled and you are a volume shipper, your leverage will produce significant discounts. When these factors are not favorable and your leverage decreases and you may or may not get a discount, and if you do, your discount may be very small.

Well, what is going on is understandable. What is not so understandable to us is why the Commission has abandoned its statutory duty to regulate maximum rate increases under the present circumstances. While Congress thought that it was creating a better world for shippers by the Motor Carrier Act of 1980, the practical result has been the worst of all worlds for the LTL shippers. The carriers can collectively set rate increases, and the Commission disclaims responsibility for examining the reasonableness.

We are playing the game by the rules that the Congress devised in the Motor Carrier Act of 1980, but we have lost the umpire. The ICC has gone home.

Up until the time that the Commission stopped regulating rate increases, our group supported the existence of the rate bureaus. Now these groups of shippers have withdrawn their support of collective ratemaking and are supporting the termination of antitrust immunity for rate bureaus.

Further, as Chairman Taylor indicated earlier, we have petitioned the ICC to withdraw collective ratemaking immunity on shipments under 1,000 pounds.

During this process we would ask if we are going to be faced with—that we not be faced with more of the same in terms of the

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compromise measure that you laid out before. I do not know that our groups and our shippers can take a couple more years of these unbridled increases.

During the process of deregulation we hope we can maintain some important safeguards. Some have been mentioned here this morning: safety, safeguards in the area of household goods. We would like to see some safeguards in the area of discrimination. We would like to see continuation of the bill of lading. We would like to see continuation of full liability for loss and damage on the part of carriers. And we also think it is important to retain some classification of goods.

Thank you.

[The statement follows:]

STATEMENT OF RICHARD G. VELTEN, FIRST VICE PRESIDENT, NATIONAL SMALL SHIPMENT CONFERENCE

My name is Richard G. Velten and I am an officer of the National Small Shipments Traffic Conference [NASSTRAC] and of the Drug and Toilet Preparation Traffic Conference [D&TPTC]. My office address is 501 George Street, New Brunswick, NJ 08903.

Representatives of NASSTRAC and D&TPTC testified at the hearings which led to the passage of the Motor Corrier Act of 1980, which I will refer to as the "Act", and at the subsequent oversight hearings concerning the implementation of that Act. On behalf of the members of these shipper groups, over 300 companies and industry associations shipping a large volume of LTL shipments throughout the nation at rates regulated by the Interstate Commerce Commission, we appreciate this opportunity to express our views.

ENTRY

The relaxed entry control standards of the Motor Carrier Act of 1980 continue to work well. Shippers are generally satisfied that they can add new carriers as needed and on an expedited basis. The Commission has been continually revising its procedures to further simplify and expedite the path of new carriers seeking to extend their operations or to enter the field.

RATE REGULATION—A FAILURE TO FOLLOW CONGRESSIONAL INTENT

The clearest example of the Commission not following the dictates of Congress in the Act has been in the area of regulating motor carriers' rates. Congress did not change the basic standards of legality for motor rates or the Commission's responsibility to review rate changes for conformity to the Act. Rather, Congress made it clear that rates must still meet the standard of being reasonable. Other interests will urge that there is no effective floor on rate reductions today. But our ox is being gored by the fact that the Commission refuses to acknowledge that rate increases can be unreasonably high in today's climate.

During the past year and one-half, the Commission has approved in toto every general rate increase by the rate bureaus, regardless of how inequitable. In that period, there have been rate increases on small shipments of over 30 percent. On March 25, 1983, the Commission refused to suspend or investigate general rate increases by nine major rate bureaus of $800,000,000 per year. The burden of the great bulk of this increase fell upon small shipments. While small shipments are made by both large and small companies, the small companies are usually exclusively shippers of small shipments.

DISCRIMINATION

As noted, the general freight rate increases proposed by the rate bureaus for April 1, 1983, continued a pattern of increasing the relative burdens of shippers of small shipments. That is, every bureau proposed an increase on small shipments that was greater than the increase proposed for truckload shipments. And these proposals were made in spite of the fact that the expense increases claimed by the bureau were not greater for small shipments than they were for large shipments. Many of the bureaus' "justifications" for these increases admitted that the profit-

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ability of small shipments traffic was already far higher than the profitability of truckload traffic.

The provision of the Act prohibiting unjust discrimination against types of traffic has been administratively nullified when the Commission allows carriers to earn profits (before interest and taxes) of 20 cents on the revenue dollar on small shipments while they are losing 20 cents on the revenue dollar on truckload shipments.

THE COMMISSION'S FAILURE TO REGULATE RATE INCREASES IS INCOMPATIBLE WITH RATE BUREAU RATEMAKING

At least the majority, if not all, of today's sitting Commissioners can be described as "deregulators". Undoubtedly, they believe in the free market and that there is no need for them to regulate rates. Apart from the fact that this is a decision for the Congress and not the Commissioners to make, the fact is that there continues to be an urgent reason to scrutinize and regulate general rate increases. The reason can be expressed in two words: rate bureaus.

LTL freight is not as competitive pricewise as TL freight. The most basic consideration is that a shipper itself cannot usually afford to undertake LTL deliveries economically, as it can do with truckload traffic which moves from one origin to a single destination intact. Beyond that, new entrants into the motor carrier field tend to be truckload-oriented, as there is a large capital requirement for establishing break bulk terminals; and new entrants typically do not have that kind of funding.

As a practical matter, rate bureau meetings of territorial groups of carriers are collectively setting the general rate increases on LTL freight. Faced with dwindling TL volume and an increase in TL competitors, they consistently have been opting for the traditional rule of monopoly pricing: charge as much as you please on the capitive (LTL) market.

Though the carriers motivation and incentive are clear, it is not at all clear why the Commission has abandoned its statutory duty to regulate maximum rate increases under the present circumstances. While Congress thought that it was creating a better world for shippers by the Motor Carrier Act of 1980, the practical result, due to Commission inaction, has been the worst of all worlds for the LTL shippers: the carriers can collectively set rate increases and the Commission disclaims responsibility for examining their reasonableness.

During 1982 and in 1983 to date, the Commission's disregard of its statutory function to regulate rate increases was so complete that it did not suspend any general rate increases. Indeed, the Commission has reduced its staff of advisors on rate increases from 34 to only 7, eliminating 80 percent of the staff needed to do an effective job.

Only recently the majority of the Commission publicly verified its complete indisposition to perform its statutory responsibility to regulate rate increases. The Commission has two basic options to establish standards for reasonable rates, either on a case-by-case basis or in a general rulemaking proceeding. Since it has initiated no rate investigations during the last two years, the Commission has no pending rate investigations initiated under the reign of the present majority. What it has had on its docket for decision are: (1) several April 1978 general increases still under investigation (I&S Docket Nos. 29772, *et al., General Increase, SMCRC, April 1978*) and (2) a rulemaking, *Ex Parte No. MC-128, Revenue Need, Standards In Motor Carrier General Increase Proceedings.*

The latter proceeding, a rulemaking, was instituted in 1979 as an aid to the final decisions in "SMCRC," et al., immediately after it had issued a decision in "SMCRC" requiring a roll-back of that general increase. The finality of the SMCRC decision was stayed pending a decision in *Ex Parte MC-128* in order to reconsider *SMCRC* in that light.

Thus, the Commission had pending for several years both a rulemaking and a rate investigation proceeding, either of which was an appropriate vehicle to inform the carriers and the public of standards for reasonable rate increases. What did this Commission do with those proceedings? On July 28, 1983, it issued a brief decision by majority vote, with Chairman Taylor dissenting, dismissing both the *Ex Parte MC-128* rulemaking and the entire group of *SMCRC, et al.* pending rate investigations.

No more complete abdication of its ratemaking functions could be imagined. The Commission has told the world that it is not interested in reviewing rate increases and that it will not issue any standards as to what is a reasonable rate. Shippers look to this Committee to admonish the Commission in clear terms that Congress

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has not abolished rate regulation and that the Commission must discharge its responsibility to administer the Act.

This Committee should also do whatever is appropriate to obtain the confirmation of three new Commissioners with an understanding of the statute and a willingness to follow Congressional intent.

LIABILITY FOR FREIGHT DAMAGE

I would also like to point out an area in which the ICC's inability to monitor its decisions has negatively affected shippers, viz., liability for loss or damage to freight.

Notwithstanding a Commission order which clearly stated that the railroads would continue to be liable for loss and damage on TOFC/COFC traffic unless shippers agreed to the contrary, some railroads are accepting TOFC/COFC freight only if the shipper agrees to allow the railroad to limit its liability for loss and damage. The Commission has done nothing to stop this practice.

On its own, the Commission has rewritten the loss and damage statute for freight forwarders and household goods carriers by allowing them to self-limit the amount of their liability without the statutorily required showing that the "value would be reasonable under the circumstances". In its decision in the *Transconex* case, No. FF-305, the Commission has ruled that such carriers will be allowed to limit their liability to a specified value simply because it gives shippers an additional "option", regardless of whether the value limit is unreasonably low. It is clearly contrary to Congressional policy to thus relieve such carriers from responsibility for their own negligence.

THE FUTURE OF RATE BUREAUS

Up until the time that the Commission stopped regulating rate increases, NASSTRAC and D&TPTC supported the existence of rate bureaus, as excesses of collective ratemaking could be checked by exercise of the Commission's suspension power. Under current circumstances, these groups of shippers have withdrawn their support of collective ratemaking and are supporting the termination of antitrust immunity for rate bureaus.

Although certain of the functions of rate bureaus are "repealed" by the Act as of 1984, the key functions will persist, namely, general rate increases. Although the majority of the Ratemaking Study Commission has issued a report favoring expedited repeal of the remaining antitrust immunity, there is no immediate assurance that Congress will enact such a change in the law.

Meanwhile, NASSTRAC and D&TPTC have taken the step of petitioning the Commission to remove rates on shipments under 1,000 lbs. from the scope of any Commission-approved collective ratemaking agreements. That petition is pending and no visible action has been taken on it. We suggest that this Committee recommend that the Commission expedite its consideration of this issue.

The CHAIRMAN. So at least speaking for either yourself or NASSTRAC, you do not go as far as the other witnesses have gone in terms of total deregulation of the motor carrier industry except for what would be, I think, reasonably agreed upon safety and insurance standards?

Mr. VELTEN. We would like some of the safeguards that I just mentioned.

The CHAIRMAN. State those specific safeguards again.

Mr. VELTEN. Some administrative safeguards against discrimination in rates and service, safeguards to continue that the carriers retain—that the carriers continue to protect the goods to full liability, the maintenance of the status of the bill of lading contract as the contract of carriage, and the last is we think it is important to retain some classification for the orderly publication of rates.

The CHAIRMAN. Are you limiting your comments there to basically less than truckload shipments?

Mr. VELTEN. Yes. The area where we need the protection. Our members also ship truckload volume, but the LTL area is where we need these protections.

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The CHAIRMAN. Jim Edler, let me ask you a question, because I know in your other life you work for American Greetings Corp., greeting cards. And I am assuming in that business you literally ship to the smallest towns in America.

Mr. EDLER. Senator, we make more than 1½ million small shipments a year to 40,000 plus customers.

The CHAIRMAN. Any town that would have a combination gas station-grocery store probably has some of your cards in it, do they not?

Mr. EDLER. Yes. As a matter of fact, I was a little disturbed by the comment that Senator Pressler made about service to South Dakota. During a break, I made a phone call to my office to see if we had any customers in small communities in South Dakota. My staff conducted a quick survey of our customers and found that in the following towns—I will give you the populations—we do have customers. I will say at the outset, since the passage of the Motor Carrier Act, none of these customers in South Dakota have complained about service.

The towns are: Buffalo, population 473, one customer; Summit, population 290, one customer; White River, population 561, one customer; Deadwood, population 2,035, four customers; and Hoven, population 615, one customer.

By the way, Mr. Chairman, I asked my staff, to make sure that these small communities were not adjacent to larger communities to insure that they were representative of the rural type community of concern to Senator Pressler.

The CHAIRMAN. Let me ask you further—and that is very, very helpful, and I can assure you that I will make a copy of that and give it to Senator Pressler very soon.[1]

Mr. EDLER. I have no doubt.

The CHAIRMAN. In your testimony you cited the rather impressive 1982 profit figures for the trucking industry or at least the profits this year. How do you reconcile these figures with other statistics which seem to indicate that the industry is in trouble?

Mr. EDLER. Well, Mr. Chairman, I think it goes back to the old saw about the rising tide lifting all ships. In point of fact, the improving economy has picked up the fortunes of the motor carrier industry.

You are probably going to hear from Dr. Silberman in the latter panel about the studies that he has done which indicate that the motor carriers will probably not share in any upcoming prosperity. I think the facts indeed indicate that something else has happened.

The CHAIRMAN. I keep coming back to that barometer of the stock market, because people who invest in trucking companies are not dumb people and I am impressed with their performance on the stock market, in most cases above the general index of the rise, for whatever reason.

Mr. EDLER. Generally, prices of stock are indicative of future expected performance. It appears that most security analysts who follow the industry expect some good things to come from the

[1] Senator Pressler's followup on this testimony is included in the hearing record of the Committee's December 15, 1983 hearing on oversight of the Motor Carrier Act of 1980 held in Sioux Falls, S. Dak.

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motor carrier industry. From those I have talked to, and I have talked to some people from McDonald & Co., they are particularly enthusiastic about certain well-managed motor carriers.

Now, obviously, poorly managed motor carriers are not going to fare as well, but that is true in the economy at large as well.

The CHAIRMAN. Well, of course, basically what you had under regulation is badly managed companies got some profit and well managed companies made a lot of profit, but everybody got some because they had the protection of the umbrella.

Mr. EDLER. It is even worse than that, Mr. Chairman. What you had was a regulatory scheme designed to make sure that everybody stayed around until the economy rebounded. So as a result, the excess capacity was kept in the business by means of increasing the prices to insure that everybody had a little bit of money to stay alive.

Well, when you free any kind of industry from that kind of artificial restraint, you are going to see the capacity more properly reflect the demand. This is what is happening in the motor carrier industry today in the opinion of the league.

The CHAIRMAN. I think, ironically, you have somewhat the same situation in the automobile manufacturing industry in this country, although they were not regulated. But so long as they all paid the same wages and so long as they all had roughly the same expenses, then it did not matter how high those wages and expenses were because they were only competing against each other. It is when they suddenly found that they were faced with foreign competition that the system fell apart.

But they were, in essence, as effectively regulated and protected so long as they all had the same situation as was any trucking company under the Interstate Commerce Commission.

Mr. EDLER. That appears to be so.

The CHAIRMAN. Mr. Andrews, let me ask you what do you think is going to be the financial future of the trucking industry, assuming a normal recovery. Are they going to ride along with the recovery? Are they going to do worse than the recovery, and if so, why?

Mr. ANDREWS. I am not a financial analyst. I am a lawyer. As I said earlier, I think the big carriers, the ones who are listed on the stock exchange, by and large are going to do all right. But I think they can do all right in any environment. I do not know of any large, successful motor carrier today who was not also a large, successful motor carrier prior to deregulation with the possible exception of one company called Leaseway which has started a nationwide small shipment trucking operation.

But I think it is undeniable that if those large, successful carriers are going to continue that way, one reason is that there has been a lot of concentration in the industry, especially in the small shipment trucking industry, in the past few years.

I think it is undeniable there are fewer LTL carriers today than there were prior to 1980—probably a lot fewer—and I do not know of any new entrants into that sector of the trucking business other than Leaseway which has already been mentioned. And I seriously question whether in the long run that kind of concentration in that important sector of the trucking industry is going to be good for the economy.

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I thought the object of the 1980 act was to increase competition. It does not seem to be having that effect in terms of the number of players in the LTL game.

The CHAIRMAN. It is interesting, though, from the shippers, even in many cases in LTL they complain about the rates, but I have not run across many shippers that have not said that they think they have more options than they used to have. Now, more so in truckload, I understand, than less than truckload; but I run across very few that think they do not have more options than they used to.

Mr. ANDREWS. Well, in response to that I can only point to the studies that the ICC and the DOT themselves have conducted. As we read them, while some small town shippers and small shippers say there has been some improvement, those are in the minority. Most say that the 1980 act has not made any difference, and that certainly is in contrast to the claims at least that are made for the larger number of carriers available and the lower rates available in the country at large.

The CHAIRMAN. I do not think you have quite paraphrased that study correctly. More people said service better than said it was worse. The bulk of them said it did not seem to make much difference. But of those who said it was better versus those who said it was worse, those who said it was better outnumbered those who said it was worse.

Jim Edler, let me ask you this question. Your company has to ship small lots all over this country. Are you prepared to go to the total phasing out of motor carrier regulation except for what would be I think nationally agreed upon safety and insurance standards?

Mr. EDLER. American Greetings Corp. is. However, I have to point out that the league has not adopted such a position.

Senator, you taught me something in 2 years we served on the Motor Carrier Ratemaking Study Commission—that is forging a consensus in Congress is difficult. I find that forging a consensus in the NIT League is somewhat akin to that.

The legislative committee of the league is currently considering a large number of options pertaining to further motor carrier deregulation. We have obviously addressed two of them. With respect to the question of entry, we have formulated our position. The committee which I am chair is making its recommendation with regard to antitrust immunity. But for the rest, the league will have to remain silent at the present time.

By the way, with regard to competition, just because you have a lot of people charging the same price does not mean you have true competition. I would rather have fewer people who are truly competing with different price structures and different innovative pricing initiatives than have a whole bunch of people charging the same prices.

The CHAIRMAN. Mr. Velten, let me ask you this. One of the qualifications you had was you were a little worried about the Interstate Commerce Commission's actions relating to liability for loss or damage to freight, and that is even if we go toward deregulation. That is one of the areas that you would like some protection in.

Can you elaborate a bit on that?

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Mr. VELTEN. We would like the carriers to retain the full liability for goods that they transport for a variety of reasons. As shippers we turn over our goods to them, and we think that they ought to protect them and exercise due care in their handling. And certainly the way that they will best do that is to insure that as they handle our goods, they are responsible for the full value of those goods.

The limitation of liability can get right at the handling of our freight. Now, there are ways that liability can be limited, but what we look for there is some reduction in the price that the carrier is going to charge for the transportation and the fact would be whether we are willing to assume the risk of loss or damage of our goods in consideration of a lower price.

But to just carte blanche allow the carriers at this point to reduce their liability below full value, which is where it is pegged at now, is wrong. There is no reflection in the rate for that.

The CHAIRMAN. Gentlemen, thank you. I have no more questions.

We will move on to panel three. Mr. Henderson, Mr. Zigich, and Mr. Silberman.

Mr. Henderson, go right ahead.

STATEMENTS OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA; AND GEORGE ZIGICH, VICE PRESIDENT—TRAFFIC, AAA TRANSPORTATION CO.; ACCOMPANIED BY DR. IRWIN H. SILBERMAN, IRWIN H. SILBERMAN AND ASSOCIATES, REPRESENTING THE AMERICAN TRUCKING ASSOCIATIONS, INC.; JIM HARKIN, EXECUTIVE DIRECTOR, NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION; AND JOHN McFADDEN, ATTORNEY

Mr. HENDERSON. Thank you, Mr. Chairman.

I am executive vice president of the Private Truck Council of America.

PTCA is the only independent national organization not affiliated with the ATA representing nontransportation companies with respect to the operation of trucks by those companies in the course of their own manufacturing, processing, retailing or other businesses.

Private trucking is acknowledged to be the largest segment of the trucking industry, and PTCA's approximately 1,800 member companies include Fortune 500 companies as well as numerous smaller concerns.

Let me first say that we feel that the Interstate Commerce Commission is properly implementing the Motor Carrier Act of 1980 by removing impediments to inefficient truck transportation. In particular, we want to support the Interstate Commerce Commission's actions removing restrictions to efficient leasing transactions and urge this committee to adopt legislation consistent with the Commission's actions which have not yet been implemented due to stays issued by the 11th Circuit Court of Appeals.

In the spirit of the 1980 act, the ICC, in February 1982 in Ex Parte No. MC-122 sub. 2, decided that private carriers could single-source lease equipment and drivers from unregulated entities such as owner-operators on an exempt from ICC basis.

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Previous to that decision, a lease arrangement between an owner-operator and a private carrier had been considered for-hire carriage, which would be illegal without proper authority. Certainly this ICC decision would allow private carriers an additional and flexible source of labor and equipment, and would provide new opportunities for hard-pressed owner-operators, I think going to some of the concerns expressed earlier by Senator Pressler.

The for-hire trucking interests, however, challenged this ICC decision in the 11th circuit court which has stayed the decision pending appeal. Our organization joined with the ICC in defending the ICC decision, but the matter is still pending in court. It has gone on for almost 2 years now.

So with this decision stayed, private carriers have yet to be able to take advantage of an option, of an efficiency presented by this opportunity to single source lease from unregulated entities.

Since the Motor Carrier Act itself did not explicitly grant this relief as found in Ex Parte MC-122 and with the matter now held up, we would respectfully ask this committee for specific legislative relief.

Likewise, in the spirit of the 1980 act, the ICC in Ex Parte MC-43 sub 12 rendered a decision in November 1982 allowing private carriers the opportunity to trip-lease their drivers and equipment to for-hire carriers. This decision removed the previously long-held rule that such leases had to be for a minimum of 30 days. The ability to trip-lease on the part of private carriers would go a long way toward helping them eliminate their empty back-haul problem to an extent at least equal to, if not greater than, intercorporate hauling which was, of course, provided for in the 1980 act.

But again, for-hire trucking interests chose to challenge this in the 11th Circuit Court of Appeals, and the matter has been stayed pending appeal in that court since January 1983.

Again, we joined with the ICC in defending their decision, but pending court action, private carriers are still denied this opportunity to operate more efficiently and economically, which would be provided by this decision.

I think that goes to one of the problems that Mr. Andrews spoke to on the empty backhaul problem on return runs. So as with this decision relating to owner-operators, we also ask for specific legislative relief. To put it simply, these leasing decisions are about the ability of a private truck operator to operate efficiently and productively without redtape—namely, to lease equipment which is available and which is now underutilized.

At this point, I would like to say we had hoped earlier this year, as I guess a number of us in this room had, that a comprehensive administration trucking regulation bill would have been before this committee.

And by the way, I might mention we have been active and do support the efforts of Mr. Hitchcock and his coalition who presented the statement to you earlier today. And if all of the economic regulatory restrictions were eliminated, of course we would have the relief that we want.

However, in the absence of such a bill, we do respectfully request legislative relief in these two areas.

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The final point I would like to make has to do with the study mandated by section 19 of the 1980 act regarding the need for Federal legislation to combat the proliferation of the many differing State truck taxes and registration fees and other requirements.

That study is now complete. We understand that the Department of Transportation is working on legislation very similar to the provision this committee incorporated in the 1982 Highway Act but which was deleted in conference.

While we support even stronger legislation for this, we commend the committee for its action, and we hope that you will urge the administration to get to work on this and take the same action that you did last year.

Mr. Chairman, that concludes our remarks.

Thank you very much.

[The statement follows:]

STATEMENT OF RICHARD D. HENDERSON, EXECUTIVE VICE PRESIDENT, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

My name is Richard D. Henderson and I am Executive Vice President of the Private Truck Council of America (PTCA).

The PTCA is the only independent national organization (not affiliated with the ATA) representing non-transportation companies with respect to the operation of trucks by those companies in the course of their own manufacturing, processing, retailing, or other businesses. Private trucking is acknowledged to be the largest segment of the trucking industry, and the PTCA's approximately 1,800 member companies include Fortune 500 companies and numerous smaller concerns.

We appreciate the opportunity of appearing before you today. Accompanying me is John DeVierno, PTCA General Counsel, of the law firm of Billig, Sher and Jones.

Let me first say that we feel the Interstate Commerce Commission is properly implementing the Motor Carrier Act of 1980 by removing impediments to inefficient truck transportation. In particular, we want to support the Interstate Commerce Commission's actions removing restrictions to efficient leasing transactions and urge this Committee to adopt legislation consistent with the Commission's actions which have not yet been implemented due to stays issued by the 11th Circuit Court.

In the spirit of the 1980 Act, the ICC in February 1982 in Ex Parte No. MC-122 (Sub.-No. 2) decided that private carriers could single source lease equipment and drivers from unregulated entities such as owner-operators on an exempt from ICC basis. Previous to that decision, a lease arrangement between an owner-operator and a private carrier had been considered for-hire carriage which would be illegal without proper authority. Certainly this ICC decision would allow private carriers an additional and flexible source of labor and equipment and would provide new opportunities for hard-pressed owner-operators.

The for-hire trucking interests, however, challenged this ICC decision in the 11th Circuit Court of Appeals which has stayed the decision pending appeal. PTCA joined with the ICC in defending the ICC decision but the matter is still pending in Court. With the ICC decision stayed by the Court, private carriers have yet to be able to take advantage of efficiencies presented by the opportunity to single source lease from unregulated entities.

Since the 1980 Motor Carrier Act did not explicitly grant the relief found in Ex Parte No. MC-122 (Sub.-No. 2), and with the matter now held up in Court, we ask this Committee for specific legislative relief on this issue.

Likewise, in the spirit of the 1980 Motor Carrier Act, the ICC in Ex Parte No. MC-43 (Sub.-No. 12) rendered a decision in November 1982 allowing private carriers the opportunity to trip-lease their drivers and equipment to for-Hire carriers. This decision removed the previously long held rule that such leases had to be for a minimum of 30 days.

The ability to trip-lease on the part of private carriers would go a long way toward helping them eliminate their empty backhaul problem to an extent at least equal to if not greater than intercorporate hauling which of course was specifically provided for in the 1980 Act.

But again, for-hire trucking interests chose to challenge this in the 11th Circuit Court of Appeals and the matter has been stayed pending appeal in that Court since January 1983. And again PTCA joined the ICC in defending the ICC's decision.

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Pending Court action, private carriers are also denied an opportunity to operate more efficiently and economically which would be provided by this decision.

So, as with the decision relating to owner-operators, we also ask for specific legislative relief on the trip-lease issue in order that we can operate more efficiently and improve productivity in this country. To put it simply, these leasing decisions are about the ability of a private truck operator to operate efficiently and productively without red tap, namely, to lease equipment which is available and is now underutilized.

At this point I would like to say we has hoped earlier this year that a comprehensive Administration trucking deregulation bill which would include provisions eliminating all economic regulatory restrictions on leasing would have been before this Committee by now.

However, in the absence of such a bill, we do respectfully request legislative relief in the two areas I have just outlined.

The final point I would like to make today has to do with the Study mandated by Section 19 of the 1980 Motor Carrier Act regarding the need for federal legislation to combat the proliferation of the many differing state truck taxes and registration fees and other requirements. That study is now complete. We understand that the Department of Transportation is working on legislation very similar to the provision this Committee incorporated in the 1982 Highway Act but which was deleted in Conference. While we support even stronger legislation to achieve uniformity, we commend this Committee for its action on this matter in connection with the Highway Act and we hope this Committee will begin new efforts in this area because this problem is getting worse constantly.

This concludes my remarks, Mr. Chairman. We look forward to working with this Committee to improve productivity and to get rid of the crazy quilt pattern of state laws and regulations which impede interstate commerce.

The CHAIRMAN. Thank you.

Mr. Zigich.

Mr. ZIGICH. Good morning. I am the vice president for traffic, AAA Transportation Co., a medium-size trucker in Trenton, N.J. I am appearing here on behalf of the American Trucking Association. With me this afternoon I have Dr. Irwin Silberman, I have Mr. Jim Harkin, our executive director of the National Motor Freight Traffic Association, and one of our attorneys, Mr. John McFadden.

I will come right to the point, Mr. Chairman. We, too, do not think everything here is rosy under the Motor Carrier Act of 1980, and quite frankly, we have a very frustrated industry, and some in the industry are outraged as to what is happening under the Motor Carrier Act of 1980, as well as the Interstate Commerce Act.

We believe that essentially the Interstate Commerce Commission has taken it upon themselves to nonregulate. They are not regulating that law which is on the law books today, and we object to that. We object to that, and we think essentially what has happened here is we have had a Motor Carrier Act of 1980 that significantly increased entry. We understood that. This industry accepted the legislation as it was anticipated when it came forward.

The entry of some 10,000 new competitors by itself in the midst of a devastating recession that was absolutely the greatest since the Depression created serious overcapacity problems in our industry. Knowledgeable people in our industry believe we have from 30 to 40 percent overcapacity in the industry right now. So be it. That is where we stand.

We understand it. We think they have violated those provisions. We think that they have not properly construed the Motor Carrier Act of 1980 as to its entry provisions, and we still do not properly believe they are abiding by those provisions.

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However, to compound that, what the Commission essentially did is to abdicate their rate responsibility under this act, this law, and the law does say that rates are supposed to be just and reasonable; they are supposed to be nonpreferential; they are supposed to be nondiscriminatory and prejudicial, and in our view, what we are not supposed to have is below cost pricing and destructive competitive acts day in and day out with the rampant proliferation of the below cost ratemaking in our industry.

I am here to tell you, sir, as I see it and our industry sees it day in and day out, we have the most rampant case of below cost pricing, discriminatory pricing, preferential pricing, prejudicial pricing, and we do not think it is proper. We do not think this law allows a laissez-fair free market philosophy that perhaps the Commissioners are intending to implement, but this law does not call for that. And we are opposed to it.

We think that this law calls for reasonable regulation, and we are not getting it. We have far too much destructive competitive below cost ratemaking in our industry, and I want to qualify that statement right now.

Not for a minute do we think in this industry we are going to turn the clock back, and I mean to tell you we are not pantywaists in this regard as it relates to competition.

In my own medium size company we compete with over 2,000 truckers in our territory, and I think that is a sizable bit of competition. I frankly do. I wonder how many shippers compete with 2,000 entities. Well, we do, and we do not look for any aid in that regard except one, and that one we feel very strongly about.

We are exposed to a below cost pricing from carriers that are 5, 10, 15, 20 times bigger than we are, and they are stealing our business left and right with below cost prices. And we petitioned the Interstate Commerce Commission once, twice, three times, four times and hire ourselves attorneys and consultants and prove that that carrier, the proposing carrier was taking our business from us, is publishing his rates below his cost, and they send us one signal back after another that we are not going to suspend those rates; we are not going to do anything about them. We do not care how odious the rates are. We do not care how below cost they are, how discriminatory they are, how preferential they are. We are not going to do anything about it.

We do not think that is right, Senator. We do not think this law—maybe not a law that will be here 5 or 10 or 15 years from now, but this law allows that, and we are violently opposed to that. We are bitterly opposed to that.

The CHAIRMAN. Let me make sure I understand. You think not only does the present law not permit that, but you would be opposed to any law that permitted it anyway?

Mr. ZIGICH. Yes, sir, that is correct.

The CHAIRMAN. Were you done or not? I interrupted you.

Mr. ZIGICH. That is all right. I am almost done.

The CHAIRMAN. That is fine. Your time is not up. I interrupted you.

Mr. ZIGICH. In that regard let us just talk about their abdication of reasonable rate authority.

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We recently had an ex parte 166 proceeding which a lot of testimony was taken in, and it would seem to me as a minimum they could have come out with, if nothing else, one standard, and they could have come out and said thou shall not publish rates below cost and enforced it, enforced it, in addition to that which is in the regulations today, the law today against discrimination, undue preference and prejudice.

What is wrong with those standards? What is wrong with them? Well, we do not have those standards, and again, we do not look to the Government through its agency to protect us from fair competition. What we think we have a right to do is be protected from destructive competitive competition, and in that regard, Senator, I would request that this committee admonish the Interstate Commerce Commission to abide by this law, implement this law that is on the books. That is their responsibility, is it not? Have they not sworn to uphold this law? Is that not their responsibility?

If the law changes in the next 5 or 10 years, so be it. Then we will then have to adjust to a new law and a new law of the land. But we think what is happening here is wrong, and we ask this committee to do so.

The CHAIRMAN. Are you convinced that the courts will uphold your contention that they are not enforcing the law?

Mr. ZIGICH. Yes, sir. If we can afford to go to court, yes, sir, individually and through industry groupings, if we can put them together. And can I just expound on that for a minute?

The CHAIRMAN. Well, you do not really need to. I am just curious. Are you convinced they are not enforcing the law, and you are convinced you have a perfect legal case and that the courts are going to sustain your position?

Mr. ZIGICH. As long as we can put the money together to take a case properly, yes. And it is a question of money.

The CHAIRMAN. Are you suggesting that the American Trucking Association cannot put the money together for that?

Mr. ZIGICH. I am suggesting, sir, that the legal fees involved in small to medium size carriers is significant in protecting our interest. Yes, I am.

The CHAIRMAN. But you are not talking about the ATA taking this case on then?

Mr. ZIGICH. It depends on what case we are talking about. It does.

[The statement follows:]

STATEMENT OF GEORGE ZIGICH ON BEHALF OF AMERICAN TRUCKING ASSOCIATIONS, INC.

I. QUALIFICATIONS

My name is George Zigich. I am the Vice President of Traffic of AAA Trucking Corporation, Trenton, New Jersey. I appear here today on behalf of the American Trucking Associations, Inc. (ATA). My employer is a motor common carrier of property operating over regular and irregular routes, providing the full range of motor common carrier services, handling all size shipments form minimum charge shipments to multiple truckloads on the widest range of general commodities. My company generally operates between points in the northeastern part of the United States covering 10,000 points from eastern Pennsylvania and the Washington, DC metropolitan area to points on the eastern seaboard from Maryland north to New Hampshire. Our company belongs to several Motor Common Carrier Rate Bureau. I

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serve on the Middle Atlantic Conference General Rate Committee and its Board of Directors, the New England Motor Rate Bureau Board of Directors, the National Classification Committee, the Regular route Common Carrier Conference Board of Governors and a whole host of allied sub-committees. I have been involved in motor carrier ratemaking in a managerial capacity for some 22 years and have been involved with motor carriers for over 30 years. I am a member of the Board of Directors and Corporate secretary of my company.

II. BACKGROUND

Pursuant to section 3(b) of the Motor Carrier Act of 1980 [MCA] (Public Law 96-296) your committee is charged with the responsibility of conducting oversight hearings on the effect of the Motor Carrier Act of 1980, on an annual basis for 5 years to ensure that the MCA is being implemented according to Congressional intent and purpose. The American Trucking Associations, Inc. appeared before your committee in both 1981 and 1982, as well as the Surface Transportation Subcommittee on Public Works in the U.S. House of Representatives in each of those years, to advise the Congress of the methods being used by the Interstate Commerce Commission [ICC] to implement the MCA. We believe the facts presented in our prior testimony, in 1981, in 1982 and as presented herein, clearly demonstrate that the ICC has not implemented the MCA according to Congressional intent and purpose.

Rather than rehash matters which have been placed in the record before your Committee in prior years, in this statement I shall attempt to provide you with an update showing how the ICC has continued to blatantly defy Congressional intent and purpose in implementating the MCA. I shall also include in this statement examples of several new transgressions of Congressional intent and purpose, committed by the ICC since ATA last had the opportunity to testify before your Committee. Most of these events are chronicled in Appendix "A" attached hereto.[1]

Section 3(a) of the Motor Carrier Act of 1980, wherein the Congress stated its findings, provides that the Interstate Commerce Commission should be given explicit direction for regulation of the motor carrier industry and well-defined parameters within which it may act pursuant to Congressional policy; and that the Commission should not attempt to go beyond the powers vested in it by the MCA and other legislation enacted by Congress. The Congressional findings further stated that legislative and resulting changes should be implemented with the least amount of disruption to the transportation system consistent with the scope of the reforms enacted.

It should be evident from the testimony previously provided this Committee by the ATA, the testimony contained in this statement, as well as the testimony of several other interested parties, that the manner of the implementation of the MCA used by the ICC has in fact resulted in substantial disruption to the transportation system, and has gone well beyond the powers vested in the Commission by the MCA.

III. IT IS ABUNDANTLY CLEAR THAT THE ICC CONTINUES TO BRAZENLY DEFY CONGRESSIONAL INTENT AND PURPOSE

In its previous testimony before your Committee at Oversight Hearings in both 1981 and 1982, ATA went on record as fully supporting the MCA as written by the Congress. Our position has not changed. We know that when Congress enacted the MCA, the views of many diverse interests were thoroughly considered. As a result, the provisions that become law represented a well balanced compromise that accommodated the legitimate interests of all parties, while continuing to protect the public good.

Essentially, the MCA accomplished two objectives. First, it relaxed entry barriers. However, the revised act did not contemplate wholesale grants of authority which breeds excess capacity and ultimately higher costs to the general public. Second, the MCA formally introduced the promotion of competitive transportation service as a part of the National Transportation Policy. Again, however, the revised Act did not change, in any way, the statutory provisions that require rates to be reasonable and non-discriminatory.

We come here today still basically supporting the MCA. Our fundamental position has not changed. We support the kind of regulation envisioned by the Congress when it passed the MCA. Congressional intent and purpose, as evidenced by its legislative history, can be achieved only if the regulators act responsibly in the performance of their sworn duty to faithfully admi er the Act. Without such a com-

[1] The appendix has been retained in the committee f

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mitment, the provisions of the MCA are rendered meaningless because of the manner of application or lack thereof.

Unfortunately, there has been no meaningful enforcement of the MCA. The ICC has not acted in a manner that, in any way, could be characterized as being responsive to Congressional intent and purpose. Indeed, the facts are to the contrary. The present ICC Commissioners have elected to administer the Act according to their own personal philosophy rather than by the explicit terms of the statute in conjunction with its legislative history.

That, Mr. Chairman, is what brings us here today. Our purpose here is twofold: first, to document the record before you with a clear showing of the lack of proper implementation of the MCA by the ICC; and second, to implore your Committee to take appropriate action by strongly admonishing the ICC (a) to immediately begin proper implementation of the MCA according to Congressional intent and purpose, (b) to specifically identify those acts and omissions where the agency has gone beyond the bounds of Congressional intent and purpose, and (c) to require the ICC to report to the Congess with some degree of regularity, the nature and extent of the specific corrective action.

In previous testimony before this Committee, we have shown through a well-known transportation economist, Irwin H. Silberman, Ph.D., comprehensive empirical data to demonstrate the serious, deleterious financial condition of the motor common carriers of general commodities. However, many critics have argued that the reason for the carriers' serious financial predicament is because of the country's severe economic recession rather than the MCA or the ICC's manner of implementation.

It has been our position throughout that the MCA should be given a reasonable time period within which the motor common carrier industry and the general public could adjust to the provisions of the new Act, i.e., the MCA should be given a reasonable opportunity to work before any reasoned and critical evaluation could be made.

Now, having lived with the MCA for more than three years, the actual short term impact, and the projected long term effects can be rationally evaluated by the Congress. We urge your Committee to make such an evaluation with great haste, before it is too late, and the mainstay of the motor common carrier system is destroyed.

The detailed analysis submitted today to this Committee by Dr. Silberman clearly demonstrates that the country's severe economic recession had a greater impact on the motor carriers than it did on most other industries. His showing also makes clear the fact that the method chosen by the ICC to implement the MCA has resulted in a less efficient and higher cost service to the shipping public. The ICC has indeed fostered wasteful transportation.

A. Failure to properly regulate entry

When Congress wrote easier entry standards into the MCA it did not intend that certificates of public convenience and necessity should be granted virtually automatically to all applicants, and on only the broadest terms. If the Congress had so intended, it simply would either have eliminated from the MCA entry standards in their entirety or reduced the showing necessary to obtain a certificate to a "fitness only" standard. That is not what Congress did in the MCA, but that is what the ICC has done in its implementation of the MCA. The results have been, not just more competition, but wasteful excess capacity, accented by the deep recession.

Failure of the ICC to properly implement the revised entry standards of the MCA has resulted in an enormous increase in the number of authorized motor carriers. The ICC's Office of Transportation Analysis reports that there were 25,342 authorized carriers as of June 1, 1983, a 43 percent increase since the enactment of the MCA. Of almost 4,800 authorities granted during the last 12 months, 600 were nationwide applications involving over 100 new firms. There are now 870 nationwide carriers. Over 900 companies are performing compensated intercorporate hauling among some 10,000 wholly owned subsidiaries. More than 500 owner-operators were granted general commodity backhaul authority. The ICC Office of Transportation Analysis also reported that the number of carriers filing for bankruptcy were at an all time high.[2]

All this goes to show that in less than three years the ICC has consciously permitted almost 10,000 new entrants to enter the market to compete for a finite volume of available freight that was decreasing in amount at an alarming rate, due to the recession. Such a rate of grant of operating authority during a severe recession can only amount to irresponsible implementation of Congressional intent and purpose,

[2] *Traffic World*, Sept. 12, 1983, p. 18.

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and utter disregard for the provisions of the dictates of the National Transportation Policy to encourage sound economic conditions among the carriers and to promote efficient transportation service through the most productive use of equipment and energy resources.

The thousands of new entrants have focused upon that segment of traffic which is the most susceptible to diversion, viz., shipments of desirable higher rated commodities in truckload quantities. Their choice is obvious. Capital outlay requirements for providing service to shippers of truckload quantities are relatively small, i.e., only the cost of a tractor and a trailer are involved. On the other hand, in order to provide service to shippers of commodities moving in less-than-truckload (LTL) quantities, a substantial amount of capital investment and working capital is required in order to acquire, operate and maintain (a) fixed plant terminal facilities, (b) large fleets of city pickup and delivery equipment, (c) sophisticated materials handling devices, (d) elaborate computer, communications and rating and billing machinery, and (e) adequate operating, supervisory and administrative personnel all necessary to render a full common carrier service.

Had the ICC been committed to administering the MCA according to Congressional intent and purpose, it would not have permitted wholesale grants of operating authority during a severe recession.

Anyone experienced in the operations of a motor carrier will freely acknowledge that, fundamentally, a carrier's headhaul or outbound loads generally consist of a trailer containing many LTL shipments. Where possible, such shipments are "top loaded" on a TL shipment of a high density commodity. The kind of freight obtained by the carrier to fill the trailer on the return inbound trip, or backhaul, is generally shipments in TL quantities. Reduced commodity rates were often established to attract backhaul shipments in TL quantities, and at the same time, to provide a revenue contribution to overhead. The operational objective is to achieve balanced round trip loads of revenue producing freight in both directions.

The end result of the ICC's irresponsible method of implementation of the MCA's entry provisions is that TL shipments are no longer available in sufficient quantities, either as bottom freight on outbound loads, or to fill the backhaul needs of those carriers that provide service on the LTL shipments, i.e., the headhaul traffic. This means that the carriers that provide the backbone of our transportation system and national defense capabilities, i.e., the general commodity LTL carriers, are faced with much greater problems of imbalance and substantially lower average round trip load factors. The net result is less efficiency and higher costs for the carriers over all, which must ultimately be absorbed by shippers in the form of higher LTL rates.

There is no doubt the carriers have been rendered less efficient by virtue of the manner in which the ICC has chosen to implement the provisions of the MCA, and not because of the MCA itself. The substantial diversion of shipments in TL quantities from the full service carrier to the TL specialist has caused most of the remaining TL traffic to move under rates which are either only marginally profitable or, because of competitive factors, not profitable at all. Consequently, the carriers as a whole have experienced a substantial reduction in operating income, and in many cases, sustained operating losses. As stated earlier the number of business failures among motor carriers is at an all time high. Few other industries, if any, have been as severely impacted financially as has the motor carrier industry.

The foregoing scenario is well-documented here today by the empirical data presented in the accompanying statement of Dr. Silberman. Those who work daily in the industry are very much aware of the increase in concentration, i.e., the significantly larger market share of available LTL being transported by the major carriers. Indeed, in the freight transportation business, the market is almost fractured between the ever growing body of carriers that specialize only in TL shipments and the remaining, dwindling number of full service carriers that transport primarily LTL shipments. Except for the favored volume shippers the overall shipping public currently is paying higher rates than what would likely have been the prevailing rate levels if the ICC had not opened the flood gates in the granting of operating authorities thereby permitting the kinds of substantial imbalance of operations, the lowering of average round trip loads and the rise in unit costs and rates.

B. Failure to properly regulate rates

During the past three years there has been a great deal of publicity about discounts and reduced rates. There are indeed literally thousands of pages of discounts and other reduced rates published in the carriers' tariffs. Most of the rate reductions are found in the establishment of new rates intended to capture TL shipments formerly moving in a headhaul direction, or even lower rates intended to capture

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TL shipments generally moving in the backhaul direction. Some discounts are published for the purpose of attracting LTL shipments from large shippers, i.e., shippers that regularly tender large volumes of multiple LTL shipments at one time.

The beneficiaries of these reduced rates and discounts are primarily the larger shippers. It follows that, if the carriers are to remain solvent, having reduced rates and given discounts on traffic that is needed operationally, but being transported at below cost, they must increase rates on other traffic to make up the difference.

Here again, in the rate area, the ICC has also failed to properly implement the MCA according to Congressional intent and purpose. The MCA made absolutely no changes with respect to the statutory requirements that all rates be reasonable, free from discrimination, and not be destructively competitive. Yet, the ICC has time and again ignored the pleas of interested parties by refusing to institute any formal investigations into the reasonableness of substantially reduced rates and gigantic discounts, which, even to the layman, are either obviously discriminatory, patently below cost, and therefore, unreasonable and destructively competitive. Illustrative examples of the ICC's gross failure in the rate area are described in detail in my attached Appendix "A". Suffice it to say here, that the recent report of the ICC, issued only last week on September 13, 1983, in Ex Parte No. MC-166, "Pricing Practices Of Motor Common Carriers Of Property Since The Motor Carrier Act Of 1980," is further evidence of the ICC's refusal to administer its regulatory function relative to rates according to Congressional intent and purpose.

In that report, the ICC concludes the following about the seige of rampant, uncontrolled discounting:

"The new pricing practices have greatly benefitted the shipping public and have led to increased carrier efficiency and heightened marketing sensitivity."

There is no probative evidence upon which the Commission could conclude carrier efficiency has increased. The empirical evidence provided here today by Dr. Silberman clearly supports a contrary conclusion. Some large shippers have obviously benefitted from discounts, but what benefit is there to the thousands of smaller shippers which do not benefit from discounts, but instead pay higher rates to support the discounts?

In its "Report," the ICC acknowledges that it will continue to refrain from use of its powers of suspension and investigation to control unlawful rates, notwithstanding the fact that the Congress has expressly provided such a remedy to aggrieved parties in the statute. In the MCA, Congress neither withdrew nor changed the right of an interested party to seek and obtain suspension and/or investigation of a proposed tariff publication which is shown to be prima facie unlawful. The ICC, by administrative fiat, has announced that it does not intend to enforce the provisions of 49 U.S.C. 10708, and instead will require aggrieved parties to procedurally utilize the more expensive and time-consuming complaint avenue, a procedure which shifts the vitally important statutory burden of proof from the respondent in a suspension and investigation proceeding to the complainant.

Thus, aggrieved parties no longer even try to seek redress through the statutory remedies of suspension and investigation because (a) of the announced policy of the ICC not to utilize its powers of suspension and investigation, and (b) of the expensive burden that must be undertaken if a complaint is filed.

IV. SUMMARY

There is no doubt that since the MCA there is a new environment for transportation by motor carriers of property. Part of the new environment stems from the statute itself and the intent of the Congress. However, the major changes have come from the method of implementation and application as chosen by the ICC.

In our prior statements submitted to this Committee, we have documented several scenarios that have taken place since the enactment of the MCA where the ICC, by substituting its will for the will of the Congress, acted or failed to act in a manner consistent with Congressional intent. Much of the actions, and inactions of which we lament, occurred during the first two years after the enactment of the MCA. Unfortunately, the ICC has continued such transgressions thereby producing a cumulative deleterious effect on the remaining motor common carriers of general commodities.

There follows an update of the ICC's deregulatory parade.

As shown earlier in this statement, in the area of operations, the ICC has failed to regulate entry in accordance with the standards contained in the MCA. The Commission continues to blatantly disregard the decision and mandate of the U.S. Court of Appeals with respect to the overgranting of authority requested. The virtual blitz of the enormous number of new or enlarged operating authority grants by the Com-

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mission amounts to nothing less than irresponsible agency action, especially during the time of a lengthy recession.

The ultimate losers, as a result of irresponsible agency action, are the public as a whole and particularly the motor common carriers of property. Unless the Congress acts to cause a substantial change in the course presently being followed by the ICC, in both the areas of operating rights and rates, there is little doubt as to the severe consequences that await this once great industry, the shipping public and the national defense. Virtually every ICC decision, notice of proposed rulemaking, policy statement or refusal to act, all done in the name of increasing competition and letting the marketplace control, has had the effect of producing inefficency, diseconomies, an overall greater than necessary increase in total costs to the American people, and a substantial weakening of the financial underpinings of an industry that is vital (a) to the future real growth of our nation's economy and (b) to the ability to respond adequately to the needs of our national defense.

The accompanying statement of Irwin H. Silberman, Ph. D. clearly depicts the financial results for this industry. Dr. Silberman's statement speaks for itself. Suffice it to say here that it is apparent from a review of the financial data and Dr. Silberman's analysis that as a result of the Commission's manner of regulation during the past 4½ years, a great economic waste has been visited upon both the industry and the public at large. Although the deregulators may try to point to the country's prolonged economic recession as the basic reason for the industry's financial plight, that alibi cannot stand in the light of Dr. Silberman's findings. The most that can be said for the recession is that it accented the problem by substantially reducing the finite volume of freight available for transportation service. Had the motor common carrier industry been subjected to responsible and even-handed regulation during the past 4½ years, the financial waste that has evolved from many bankruptcies very likely could have been avoided or substantially reduced.

V. REQUESTED ACTION

What do we ask for? Fundamentally, ATA requests that the Congress strongly admonish the ICC for its failure during the past three years to properly implement and administer the MCA according to Congressional intent and purpose, and that the Congress direct the ICC to promptly begin, and thereafter to continue, the kind of implementation of the MCA envisioned by the Congress. This would include the ICC's duty to enforce entry standards, reasonable rate levels, and the prohibition of discriminatory and destructively competitive rates. Inherent in the fair, impartial and even-handed administration of rates is a return to enforcement of the provisions of the tariff circular discussed in Appendix "A".

Finally, the Congress should remind the Commission that the provisions of 49 U.S.C. 10706(b) relating to collective ratemaking continue to be the law of the land until such time as Congress finds a need to further amend that section. Based on our previous testimony to this Committee, Congress should direct the ICC to refrain from any further harassment into the legitimate operations and functions of rate bureaus. Arbitrary restrictions imposed on collective action should be avoided, e.g., the ICC's proposal to permit competitively published rates to be met on less than 30-day statutory notice only by independent and not by collective action. Such a regulation is in fact anti-competitive as it protects the lower rate level of a single actor, and denies many other carriers the opportunity to meet, and thereby have the opportunity to participate in the competitively lower rate, solely on the ground that the many other carriers elect, for the sake of expediency, to act collectively, rather than file a multitude of individual instructions to meet the lower competitive rate on the ICC approved short notice procedure.

Unless your Committee acts in accordance with the relief here requested, the ICC will undoubtedly continue to produce, by administrative fiat, a totally deregulated motor carrier industry. However, if Congressional intent and purpose is ever to be achieved then it is imperative that your Committee promptly act in the manner here requested.

We thank you for the opportunity to present this statement.

The CHAIRMAN. Mr. Silberman. Dr. Silberman, I should say. I apologize.

Dr. SILBERMAN. Thank you, Senator.

Senator, my name is Irwin Silberman, and I am an economic and financial consultant with offices in Potomac, Md.

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I appreciate the opportunity again to appear before the subcommittee and to speak on the financial position and operating results and causes of deterioration of the motor carrier industry.

Specifically, I have worked in this area for 15 years, and I have been asked to talk about recent trends in financial position, about patterns in aggregate traffic flows and the interrelationship of the two, including the results for the first half of 1983.

I have addressed all of those matters in my prepared statement, Senator, and I had originally planned to summarize that statement in the time allotted. But, after hearing the testimony this morning, I believe, I can do a greater service to this record if I spend my few moments discussing some of the conflicting evidence, in my view, that has been offered before this committee.

When I say conflicting, what I am saying is that in an effort to support a move toward deregulation as a particular legislative outcome, there are some who quote one sort of evidence and there are others who have quoted just diametrically opposite kinds of evidence to support the same point.

So if I may, I will spend a few moments just raising some of those issues, and setting out some of those facts. For example, one of the things I heard this morning is that Chairman Taylor made a flat-out statement that rates are down, though Dr. Southard was unable to confirm that fact or supply evidence in response to Senator Pressler's question.

By the same token, the NAM and small shippers made the statement that LTL rates are up, and they are up dramatically. And I believe that in my prepared statement I present evidence that LTL rates are indeed up, and what I tried to do is demonstrate why they are up; and I will address that in a few moments.

Chairman Taylor also said that in 1983, traffic is up. Mr. Baxter confirmed that statement. In my testimony I present very recent traffic data through the first half of 1983 which demonstrate that total tonnage is not up. Despite what the advocates of deregulation will say, the fact of the matter is that total tonnage in the first half of 1983 is not up from its level in the first half of 1982 for these carriers, and that these carriers are not sharing in the recovery which other industries and other firms are experiencing and in which it was hoped they would share when I appeared before this committee last summer. So it would be wishful thinking to think that the tonnage is up, but in fact, the tonnage is not up. TL traffic, truckload traffic, continues to decline for the general freight carriers.

In addition, Chairman Taylor indicated that profits are up by 80 percent in the first half of 1983. Mr. Edler, anticipating my remarks, quoted a figure of a 349-percent increase in profits.

Senator, I was a college professor for many years before I got into this business, and I would point out that if you start with a base of 100, and then your profits decline to 10, and then everyone says well, forget about that decline, and then profits then go up to 40, I can report to you that there has been a 300 percent increase. But if you sit back with a little bit of perspective you will see that what has really happened is that profits are dramatically down from where they started. And you have to take what Chairman

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Taylor has said and what Mr. Edler has said within that perspective.

Senator, truckload traffic for the general freight carriers is down by 40 percent since 1979. What this has done is adversely impacted upon the balanced trucking operations of the general freight carriers. It has introduced inefficiencies, and those inefficiencies have created increased costs, and it is those increased costs that are reflected in the LTL rates having increased.

As evidence of that fact, Senator, it is clear that the carriers are not making any money despite the fact that these LTL rates are going up.

One further point—I understand that I am out of time, but I would like to point out that because of the deterioration, it is clear that concentration in this industry, the share of the market of the largest carriers, has increased dramatically. And I am saddened to report, quite frankly, that at the end of 1982 the 10 largest motor carriers of general commodities in the United States accounted for 48.5 percent of all traffic of the general freight industry, and that is an increase of almost 5 percentage points in 1982.

It is not for me to say whether concentration is good or bad. In the last 6 or 7 years, the concentration ratio of the 10 largest carriers in general freight trucking has increased from the mid 1930's to the 1950's. If additional steps are taken legislatively to further hurt this industry, one can expect that within a very short period of time you are going to have a handful of carriers, perhaps no more than those that you can count on one hand, that are going to control the entire trucking business of the general freight carriers.

And I believe that this Congress ought to consider that fact as it contemplates additional steps.

Thank you, Senator.

[The statement follows:]

STATEMENT OF IRWIN H. SILBERMAN, PH. D.

Mr. Chairman and members of the Subcommittee:

My name is Irwin H. Silberman and I am an economic and financial consultant in private practice in Potomac, Maryland. I have participated in numerous studies of trucking industry finances over the past fifteen years.

I very much appreciate the opportunity again to appear before this Subcommittee, and to present the highlights of my analysis of the causes of the deterioration of the financial position of a major segment of the trucking industry, the motor common carriers of general commodities. In 1982, these general freight carriers accounted for $13.9 billion of operating revenues.

Unfortunately, comprehensive data on the general freight segment indicate that 1982 financial results were much worse than I predicted they would be when I appeared before you in December, 1982. Thus, revenues were down more than 11 percent in 1982 and operating earnings were insufficient to cover interest expense by a margin of almost $32 million. Several findings are of particular interest:

A. The year 1982 marked the fourth successive year of economic decline for the general freight carriers. The duration of the downturn far exceeded that experienced by other industries.

B. Since early 1979, carriers representing 16 percent of industry revenues have gone out of business; carriers accounting for an additional 28 percent of revenues are also candidates for failure.

C. An analysis of traffic data pinpoints the dramatic loss of significant volumes of truckload traffic, such traffic having previously contributed both to system balance and profitability.

D. LTL traffic has not suffered a similar dramatic decline in volume in the 1979-1982 period, taking into account the severity of the recession. LTL revenue yields

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have been increased (despite widespread discounting) to offset added costs associated with the inefficiencies resulting from loss of balance.

E. The market share of the ten largest motor carriers has risen sharply in recent years, and approached 50 percent in 1982. Though their earnings were poor, these ten carriers in 1982 earned a greater aggregate profit than did the entire general freight sector, implying a substantial loss for the 200+ remaining carriers.

F. Carrier investment in operating property declined by one-half billion dollars from the beginning of 1980 to the end of 1982. The average age of the physical plant of the motor carriers has increased in each recent year.

G. In the first half of 1983, the four-year profit slide was arrested. The analysis shows that the meager profits achieved reflect increased revenue yields, and not increased traffic.

H. Taken together, the analysis leads to the conclusion that the deterioration of motor carrier financial position has resulted from an open-entry policy which has impaired the industry. Since entry has occurred primarily in the truckload area, the volume shippers of truckload freight have presumably experienced a lower rate of increase in rates.

As an offset, LTL revenue yields have increased sharply, so that the LTL shipper is paying much higher rates than before. Despite this fact, widespread discounting has eliminated profits for the general freight carriers. In effect, then, reduced regulation is seen to have benefitted truckload shippers at the expense of both LTL shippers and the motor carriers.

I am in the process of conducting an in-depth study of the recent financial and traffic data, as well as of their inter-relationships. Upon its completion, I hope that the result of that study will be submitted to assist this record.

I. RECENT MOTOR CARRIER PROFITABILITY AND INVESTMENT: A SURVEY

The industry: 1982

In this discussion, I shall focus on the recent performance of a group of 249 regular route motor common carriers of general commodities. Consistent financial data are available for each of these carriers for the period 1976–1982. This national data base, maintained by the industry with the assistance of the international accounting firm of Arthur Andersen & Co., contains statistics for carriers which, in 1982, accounted for $13.9 billion of revenues.[1]

In my testimony before this Committee in December, 1982, I reported that, based on preliminary data, the year 1982 marked the fourth successive year of economic decline for the industry, and that the earnings decline suffered by the industry has been much more severe than that experienced by most other industries.

In point of fact, my analysis of the comprehensive data for 1982 indicates a much worse experience than was apparent last December. First, note that operating revenues in 1982 were $13.9 billion, down from $15.7 billion in 1981, a decline of 11.4 percent.

Then, consider that the operating ratio, the ratio of operating expenses to operating revenue, was 98.97 percent in 1982, leaving only 1.03 cents per dollar of revenues for interest expense, taxes, and other nonoperating items. The continuing deterioration is shown by the trend in the operating ratio:

Year:	*Operating ratio*
1979	96.15
1980	96.08
1981	97.23
1982	98.97

In 1982, motor carrier operating income was insufficient to pay interest expense:

	1982
Operating Revenues	$13,916,346,000
Operating Expense	13,772,892,000
Operating Income	143,454,000
Interest Expense	175,234,000

In response to declining business prospects and inadequate earnings, the carriers continued to reduce their outlays for operating property and equipment:

[1] The data analyzed are primarily drawn from "consolidated" reports, which reflect both the operations of the carriers and the results of their transportation-related affiliated companies.

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[In millions of dollars]

	Net carrier operating property additions	Depreciation expense
Year:		
1979	941.8	547.3
1980	552.5	580.8
1981	480.8	594.9
1982	218.1	548.4

Since outlays for new property and equipment were below depreciation charges, the carriers actually disinvested in 1980, 1981, and 1982. As a consequence, at the end of 1982, only $3,5 billion was invested in plant and equipment for the provision of the motor carrier service.

[Dollars in millions]

	Carrier operating property (net)	Percent of accumulated depreciation to original cost
Year:		
1979	$3,999.6	42.6
1980	3,969.3	44.8
1981	3,855.3	46.7
1982	3,525.0	48.7

In addition, the age of the motor carrier plant has increased in recent years. Note that at the end of 1982, accumulated depreciation equalled almost half (48.7 percent) of the original cost of all fixed assets.[2]

Financial distress

Reflecting the poor profitablity set out above, carriers have continued to go out of business or substantially reduce their general commodity operations. In fact, since January 1, 1979, 72 study carriers, which in 1978 accounted for $2.211 billion of revenues, or 16 percent of industry revenues, went out of the general freight business.

[Dollars in billions]

	Net plant	Percent of accumulated depreciation of gross plant
Year:		
1979	$559.7	40.5
1980	651.5	39.3
1981	757.5	37.8
1982	828.1	37.7

Carriers accounting for $3.9 billion of revenues in 1982, or 28 percent of industry revenues, experienced operating ratios of 97 and over in each of the years 1980, 1981, and 1982. These carriers recorded, in 1982, an operating loss of $158.7 million, before the payment of $67.2 million of interest. Clearly, the members of this group are candidates for failure. Taken together with the carriers that have failed, it is

[2] It is informative to contrast these data with those for a broad industrial composite, such as that published by Value Line. The 950 companies included by Value Line account for approximately 80 percent of the income earned by all U.S. non-financial corporations.

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clear that almost half of the motor carrier general freight system is in danger of being lost.

The ten leading carriers: 1982

Reflecting the deterioration in the industry, the market share of the largest carriers increased dramatically, and approached 50 percent of the industry total in 1982:

	Revenues of top 10	Total revenues	Market share (in percent)
Year:			
1976	$3,987,407	$10,517,145	37.9
1977	4,724,564	12,141,497	38.9
1978	5,676,177	14,191,738	40.0
1979	6,205,662	15,235,382	40.7
1980	6,409,137	15,322,300	41.8
1981	6,868,913	15,698,774	43.8
1982	6,754,559	13,916,346	48.5

The ten leading carriers in 1982 achieved operating income of $173.0 million. Since total industry operating income was $143.5 million, implicit in these figures is the observation that the 200+ carriers accounting for the other half of industry revenues actually experienced a loss from operations, before the deduction of interest:

	Top 10	All other	Industry
Operating revenues	$6,754,559	$7,161,787	$13,916,346
Operating expense	6,581,575	7,191,317	13,772,892
Operating income	172,984	(29,530)	143,454
Interest expense	62,795	112,439	175,234
Operating income less interest expense	110,189	(141,969)	(31,780)

In view of the showing that, to the extent profits were earned in 1982, they were achieved by the top 10 composite, it is important to contrast the pattern of net carrier operating property of the top 10 carriers with that of the general freight industry:

	Top 10	Carrier operating property (net) (millions)	
		All other	Industry
1979	$1,649.2	$2,350.4	$3,999.6
1980	1,717.1	2,252.2	3,969.3
1981	1,772.7	2,082.6	3,855.3
1982	1,801.1	1,723.9	3,525.0

The data above demonstrate that modest increases in top 10 carrier investment in plant and equipment have been insufficient to offset the disinvestment by the remainder of the industry. As a consequence, total industry net plant and equipment fell by one-half billion dollars from the beginning of 1980 to the end of 1982.

Summary

Advocates of deregulation have asserted that the deterioration and decline in the motor carrier industry, which I have attempted to portray, should be attributed primarily to the effects of the recent recession. With a rebounding economy, they argue, a leaner (and deregulated) motor carrier industry will participate in and enjoy increased levels of growth and profitability.

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The next section of this paper analyzes traffic data of these carriers and demonstrates, I believe, that the financial deterioration described above was primarily associated with the effects of a regulatory policy which encouraged virtually unlimited entry. As a result of that policy, the volume of truckload traffic handled by the carriers has declined markedly, and LTL rates have been increased to offset the increased costs of the inefficiencies created.

The final section of this testimony discusses carrier performance in the first half of 1983. Though the four year slide in profits has been reversed, 1983 profits thus far are meager. The evidence suggests that improved profitability is primarily a consequence of increased revenue yields, since there has been no increase in traffic handled by the carriers, despite the recovery in other sectors of the economy.

II. FUNDAMENTAL CHANGES IN GENERAL FREIGHT CARRIAGE

(1) It is generally recognized that the volume of traffic handled by the general freight motor carriers has declined sharply in recent years. That deterioration has been observed for both shipment counts and tonnage, and has been attributed by some to the effects of severe recession. The table below shows a dramatic decline in tonnage (as measured by hundredweight) in recent years,[3] and highlights the precipitous decline which occurred in 1980.

MEASURES OF GENERAL FREIGHT ACTIVITY, REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

	Shipments index (1979=100)	Tonnage index (1979=100)
Year:		
1979	100.0	100.0
1980	95.1	84.7
1981	92.2	82.2
1982	86.1	71.8
1983	87.2	71.7

(2) The significance of the recent decline in tonnage can best be understood by first disaggregating the traffic data above and classifying all such data into two categories—less-than-truckload [LTL] shipments and tonnage, and truckload [TL] shipments and tonnage. Based on the tabulation below, we see that the post-1979 decline in less-than-truckload [LTL] activity was modest, whether considered on either a shipments of tonnage basis.

MEASURES OF GENERAL FREIGHT ACTIVITY CLASSIFIED AS LTL AND TL, REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

	Less than truckload		Truckload	
	Shipments index	Tonnage index	Shipments index	Tonnage index
Year:				
1979	100.0	100.0	100.0	100.0
1980	95.8	95.8	77.5	77.2
1981	92.9	94.8	73.3	73.6
1982	87.0	87.6	63.3	61.7
1983	88.2	90.4	61.9	60.0

By way of contrast, truckload activity of the general freight carriers declined by almost one-quarter in 1980, and exhibited a further sharp decline in 1982. Indeed, on the basis of the data above, as well as on the basis of other recent data I have seen for regional groups of carriers, it appears that truckload tonnage of the general freight carriers declined by approximately forty percent from 1979 to 1983! Reflect-

[3] For 1982 and 1983, traffic indices are based upon first-half statistics derived from carrier Quarterly Reports to the I.C.C.

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ing this decline, the ratio of truckload revenues to total motor carrier revenues declined from 32 percent in 1979, to 23 percent in 1983.

(3) Since LTL traffic suffered only a relatively modest decline in the post-1979 period, while TL traffic declined precipitously, the ratio of LTL tonnage to total tonnage increased sharply! Note below the relative stability of the ratio in the 1976–1979 period, whether for the industry generally, or for the regional grouping. Then note the sharp increase in the industry-wide ratio that occurred in the years 1980, 1981, and 1982. Though that ratio is known to increase in a recession year (reflecting the greater falloff of volume shipments), the 1975 data for the ECMCA regional grouping in the table below suggest that the cyclical effects are more modest and of shorter duration than those experienced by the general freight industry as a whole since 1979.

RATIO OF LTL TO TOTAL TONNAGE, REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES, INDUSTRY AND REGIONAL GROUPINGS

	Industry nationally (in percent)	Eastern Central Motor Carriers (in percent)
Year:		
1972	(1)	34.2
1973	(1)	32.7
1974	(1)	34.0
1975	(1)	36.6
1976	41.2	34.3
1977	39.5	34.0
1978	(1)	33.7
1979	40.5	34.6
1980	45.8	40.4
1981	46.7	41.0
1982	(1)	43.6

[1] Not applicable.

Indeed, the more than proportionate decline in truckload shipments and tonnage of the general freight carriers is a direct reflection of substantial new competition for truckload traffic. Such significant new competition was first introduced in the 1979 period when the I.C.C. administratively opened the doors to new entry, and was, of course, reinforced by passage of the MCA in 1980, and the subsequent administration of that Act.

Though reduced economic regulation has increased competitors and resulted in sharply lower truckload volumes to the full-service general commodity carriers, it has apparently not introduced substantial new competitors nor dramatically affected volumes of the LTL business, where substantial capital investment is required of new entrants. We may therefore infer that much of the decline in tonnage experienced by the general commodity carriers in recent years reflects new entry into the truckload business, and may not be attributed to the effects of the recession.

(4) My analysis indicated that the major decline in TL activity of the full-service carriers occurred in the so-called class-rated TL traffic, the rates for which are generally intended to recover fully distributed costs. Note the dramatic decline in the index of class-rated truckload shipments from 1979 to 1980, and again in 1981. Indeed, the number of class-rated TL shipments carried in 1981 was 43 percent below the number carried in 1979.

TRUCKLOAD SHIPMENTS REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

	All truckload	Class-rated	Commodity-rated
Year:			
1979	100.0	100.0	100.0
1980	77.5	72.9	79.9
1981	73.3	56.8	81.9
1982	63.3	(1)	(1)
1983	61.9	(1)	(1)

[1] Not applicable.

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By way of contrast, the decline in the volume of commodity-rated TL traffic, through substantial, was not as dramatic as the decline in the class-rated TL traffic. The dramatic decline in truckload business suffered by the regular route general commodity carriers has had a disproportionate effect on general freight carrier profitability. That is to say, the data indicate that the adverse effects of new entry into the truckload business have been felt especially in the class-rated truckload area.

(5) The phenomenon described herein has substantial implications for the viability of the general freight carriers. Specifically, the loss of substantial truckload volume appears to have reduced the efficiency of the general freight business since these truckload movements were often used by the carriers to balance their systems. The integrated general freight system which handles both TL and less than truckload (LTL), has thus been impaired.

But what about the (LTL) market which, in 1979, accounted for 96 percent of all shipments and 68 percent of all general freight revenues. The evidence dramatically demonstrates that that (LTL) market has borne the brunt of reduced entry regulation in trucking. That is to say, the additional costs which have been thrust upon the general freight motor carriers because of the loss of truckload business have had to be passed on to the LTL shippers. On any basis of measurement, the revenue yield from LTL freight has increased each year since the elimination of entry controls.

CHARACTERISTICS OF LESS-THAN-TRUCKLOAD FREIGHT REGULAR ROUTE COMMON CARRIERS OF GENERAL COMMODITIES

	1979	1980	1981
Average weight per LTL shipment (cwt)	8.44	8.30	8.45
Average length of haul	604.1	610.7	625.9
Revenue per:			
LTL shipment	$57.00	$65.01	$73.88
LTL cwt	6.87	7.83	8.73
LTL tonmile	.227	.256	.279
LTL shipment of 5,000 pounds and over	372.99	424.60	461.96

Thus, the common perception that LTL rates have declined since the MCA is mistaken. Rather, revenue yields have had to increase to offset increased costs. In the aggregate, the discounting which has taken place, then, has had the effect of lowering effective yields to the level where virtually all profit is eliminated. That is to say, even with the increased revenue yield since 1979, motor carrier profits have declined sharply since 1979, and were just about eliminated in 1981 and 1982!

(6) To sum up, then, LTL revenue yields have continued to rise, despite deregulation and wide-scale discounting. Yet, profits have continued to decline sharply, implying that increased yields are necessary just to offset increased costs. Hence, administrative deregulation prior to 1980, and the current Commission's implementation of the MCA of 1980, have had the effect of abating the increase in rates for volume truckload shippers, and increasing costs of and rates for LTL freight. In the process, the full-service general freight motor carrier industry has been caught in the middle, and has watched its profits decline for almost half a decade. This decline in and elimination of profits threatens the ability of the industry to renew its plant and equipment.

(7) In this initial analysis, I also inquire as to whether the very largest motor carriers, including some of those whose common stocks have experienced notable increases in recent months, have been to avoid the pattern of deterioration exhibited by the industry as a whole. To do so, I examined the top 10 carrier groupings which, it will be recalled, accounted in 1982 for almost 50 percent of the revenues of the industry sector.

The data indicate that in terms of volume, the very largest carriers have in fact fared somewhat worse than the industry sector as a whole. Yet, this group of carriers has been able to earn a positive (albeit, small) profit in the face of generalized industry financial disaster. It is my hope that when the more extensive research study is completed and submitted to this Committee, I will be able to shed additional light upon the differences between the top carriers which, as a group account for almost half of revenues, and the industry as a whole.

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III. THE FIRST HALF OF 1983

Data for the first two quarters of 1983 strongly suggest that the general freight motor common carriers are not sharing in the improved level of economic activity currently being experienced throughout the economy. Though the data indicate that the year-to-year decline in profitability, which began in 1979, has been arrested in 1983, that improvement appears to be the result of rate increases and cost cutting, rather than the consequence of increased traffic volumes. Indeed, the data below, for a consistent group of 188 reporting carriers, highlight the fact that total tonnage for the first half of 1983 is actually slightly below total tonnage for the first half of 1982. As in previous years, truckload volumes continue to decline, and LTL volume is up by a meager 3 percent.

Analysis of the data for the first-half of 1983 leads to the following major observations:

(a) Though the direction of the movement in profits has been reversed, there has not yet been a return to a meaningful level of profitability. Profits for the first half of 1983 aggregated $142 million on revenues of $6.5 billion.

(b) The operating ratio improvement in the second quarter 1983 can be traced directly to the benefits of a higher level of revenue yield, rather than to a substantial overall traffic buildup. Specifically, second quarter 1983 revenues were 6.6 percent above those of the second quarter 1982, while second quarter 1983 expenses were 3.5 percent above those in the second quarter 1982. Tonnage, as indicated above, was virtually unchanged.

COMPARATIVE MEASURES OF TRUCKING ACTIVITY AND PROFITABILITY, GENERAL FREIGHT MOTOR CARRIERS, FIRST HALF OF 1982 AND 1983

	1982	1983
First quarter, LTL tons	11,051,000	11,302,000
Second quarter, LTL tons	11,552,000	12,006,000
First half, LTL tons	22,603,000	23,308,000
First quarter, TL tons	14,508,000	13,878,000
Second quarter, TL tons	14,874,000	14,695,000
First half, TL tons	29,382,000	28,573,000
First quarter, total tons	25,559,000	25,180,000
Second quarter, total tons	26,426,000	26,710,000
First half, total tons	51,985,000	51,881,000
First quarter, operating revenues	$2,952,433,000	$3,122,841,000
Second quarter, operating revenues	$3,182,148,000	$3,391,813
First half, operating revenues	$6,134,581,000	$6,514,654,000
First quarter, operating ratio	101.74	97.91
Second quarter, operating ratio	96.64	93.84
First half, operating ratio	99.09	95.79
First quarter, net income after tax	($45,233,000)	$26,228,000
Second quarter, net income after tax	$57,400,000	$115,820,000
First half, net income after tax	$12,167,000	$142,048,000

(c) Second quarter 1983 profitability was not widespread. One third of the carriers for which data are available operated at 97 or above! By way of contrast, the top ten carriers, which accounted for 50 percent of the revenues in the second quarter, 1983, achieved a composite operating ratio of 92. These ten carriers accounted for 65 percent of all operating income earned in the second quarter, and 68 percent of the recorded net profit of all general freight carriers.

(d) In the absence of general rate increases, the operating results for the first half of 1983 would likely have been worse than those experienced in the first half of 1982.

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The CHAIRMAN. I was struck with the statement that Mr. Edler made, however, and I am paraphrasing, that he would rather have 10 trucking companies that are competitive than 100 that are not. And you may argue that there is a concentration; somebody might argue that 10 or 15 or 20 major trucking companies all competing with each other across this country would be ample competition.

Dr. SILBERMAN. Senator, I am trained as an economist and basic to that training is the fact that if you get a handful of carriers controlling a market, in the short run you may get lower prices; in the long run, sure as heck you are going to get higher prices.

I do not think there would be any economist who would disagree with that. This is the LTL business. There is no substantial entry into the LTL business.

The CHAIRMAN. Under that theory then, we ought to have absolutely unlimited entry, and you will then have more competition and lower prices. More is better.

Dr. SILBERMAN. Two points, Senator. First of all, the LTL business requires substantial capital investment. There has been an open entry policy and very, very little increased entry into the LTL business. It has all been in the TL business.

The second point is that given what has happened, one cannot dismiss the fact that the carriers have not made money.

The CHAIRMAN. I understand that. I want to come back to your theory that the fewer carriers, your price is going to go up. Is the other side true? The more carriers, the price is at least not going to go up as much or maybe go down, or is there an exact number of carriers at which you reach the optimum price that is fair to everybody, and how do you determine that?

Dr. SILBERMAN. Well, the question that you are asking is really a straightforward one in theory. It is in the application that it begins to take on the problems. For example, the theory says the more carriers, the lower the prices; and so there has been substantial entry into the truckload business because there is very little capital investment that is required in order to get into that business.

Because of that, rates have not increased in the truckload business as they would have without that entry.

Now, what does that mean? That means that the carriers, the general freight carriers, have lost truckload business; they have overhead costs; they have costs created by inefficiencies and loss of productivity, and that loss of TL business has impacted on the LTL business where potential entrants have not chosen to enter, and as a consequence, the rates have gone up in the LTL sector. And yet the motor carriers are caught in the middle, and they just have not made any profits.

The CHAIRMAN. If there were more entries was in the LTL business would the price go down?

Dr. SILBERMAN. I believe that prices would not rise as much, you would probably see an end to the LTL system as we know it today.

The CHAIRMAN. Mr. Henderson, would your organization support the proposition that I previously—well, first let me ask it this way. Would your organization support getting rid of any further regulation of the motor carrier business in this country short of what could be reasonably agreed upon safety and insurance standards?

Mr. HENDERSON. Yes. We would support that.

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The CHAIRMAN. And would your organization, do you think, consider this compromise I have suggested, although it is a package—I want to make that very clear—but we would extend for some period of time the immunity on single line in exchange for, in essence, sunsetting all other immunities and regulations at a date certain.

Mr. HENDERSON. Yes, we would. Let me just make a comment. When it comes to the rates and the question of immunity, antitrust immunity, of course that applies exclusively to the for-hire system. But if all of this is a part of the, I think, realistic political assessment that you have made so that we could obtain the relief we want, yes.

I think we have to recognize that the coalition has got to be broader. I think you have a realistic proposal, and we support it.

The CHAIRMAN. Let me ask you a further question, a very specific one, Mr. Henderson. In your testimony you mentioned that the Interstate Commerce Commission's decision allowing private carriers to single source lease equipment for unregulated entities and to trip-lease drivers and equipment to for-hire carriers has been stayed in the court.

Why do you consider these decisions so important?

Mr. HENDERSON. Well, on the single source question that would allow our people an added source of labor, and the trip-lease question, trip-leasing of drivers and equipment to for-hire carriers is probably even more critical because that goes to the problem that Mr. Andrews spoke about or what we know is the empty back-haul on the return. And short of this trip-lease opportunity, what some private carriers have done and they can do under the "Toto" decision, they can obtain for-hire authority and of course find other shippers.

Some of them choose to do that. Others would rather not necessarily get into the for-hire business. They would rather simply deal with it on a trip-by-trip basis and remain essentially a private carrier. So I think a number of our members would rather have the trip-lease relief than be so-called forced into the for-hire business.

But short of any relief there and the uncertainty of the courts, more of them are now obtaining the for-hire authority to eliminate that problem.

The CHAIRMAN. Mr. Zigich, why did the American Trucking Association, along with the other carriers, believe it necessary to petition the ICC to investigate pricing practices of trucking companies since the enactment of the 1980 act?

Do you know of any specific examples of pricing discrimination or other illegal practices?

Mr. ZIGICH. Sure.

The CHAIRMAN. Can you give them to us?

Mr. ZIGICH. Not today I cannot, Senator.

The CHAIRMAN. Would you give them to me in writing?

Mr. ZIGICH. I would.

The CHAIRMAN. I would appreciate that very much.

Mr. ZIGICH. Yes. We thought there was a need for the case.

The CHAIRMAN. I would like to have them, because it took the ICC a great deal of time and money and effort, and I would like to specifically have what you can give me.

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Mr. ZIGICH. OK.

[The following information was subsequently received for the record:]

NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.,
Washington, D.C. December 9, 1983.

Senator ROBERT PACKWOOD,
Committee on Commerce, Science and Transportation,
Russell Senate Office Building, Washington, D.C.

DEAR SENATOR PACKWOOD: As a followup to recent Commerce Committee Oversight Hearings on the Motor Carrier Act of 1980 and on behalf of George Zigich who testified for the trucking industry, I am submitting herewith an attachment citing instances demonstrating the Commission's irresponsible flaunting of the law—by commission as well as omisson—in its regulation of motor carrier rates. The present Commission is simply failing to properly or fairly administer the rate provisions of the Motor Carrier Act of 1980. The attachment contains but a few examples from the motor carrier point of view.

Under the provisions of the Interstate Commerce Act [49 U.S.C. § 10701(a)], all rates must be reasonable.

Section 10741(b) prohibits any unreasonable discrimination.

Section 10708(b) empowers the ICC to suspend proposed rates for a period up to seven months during which time it is to investigate the lawfulness of such rates.

Section 10708(c) provides that carrier proposing changed rates have burden to demonstrate the lawfulness of such rates.

For more than a year before and since the passage of the 1980 Act, there has been massive rate cutting by motor carriers. Short run pricing techniques designed solely to capture freight through below cost pricing with blatant discrimination are the order of the day with encouragement from the ICC. Congress still commands that rates be reasonable, fair and free of predation. Given that, the ICC should actively monitor motor carrier pricing to assure that statutory standards are not violated. Instead the present Commission publicly and in utter defiance of the law has consistently refused to address petitions for review of obviously unlawful rates. Further, by publicly proclaiming their preference for "market force" determination of pricing schemes, the present Commissioners have been and continue encouraging carriers to pursue these destructive pricing policies to the maximum.

The philosophy of the present Commissioners toward rate regulation is evidenced by their actions. Where they decide regulation is unnecessary, they ignore the plain terms and/or intent of the Act. On the other hand, through administrative orders, they restrict the long-standing systems such as collective ratemaking in a way to coerce carriers down the "market force" road to illegal pricing. Carriers, unable to rely on enforcement of the law, must react to the vagaries of doing business in an atmosphere where their exigencies in combination with the unrelenting pressures of the economically strong force them to pursue discriminatory and predatory pricing practices.

The examples contained in the attachment are intended as illustrations. Others undoubtedly exist. Hundreds more *would* exist but for the fact that individual carriers are pragmatic and have recognized the futility and substantial waste of resources in seeking relief before the present Commissioners.

The present Commissioners have administratively usurped the jurisdiction of the Congress and the Public Works Committee. The uncertainly and instability sought to be eliminated by the Act of 1980 has instead been intensified. The industry is being destroyed and only the Congress can ensure the proper application of the existing law and effectively estop the Commission from abetting this destruction.

We urge an immediate and thorough investigation by the Committee and appropriate direction to the ICC establishing a moratorium of further ICC action to diminish or eliminate the collective rate and classification-making system as well as to encourage discriminatory and/or predatory pricing.

Very truly yours,

JAMES C. HARKINS.

Enclosure.

POSITION OF THE AMERICAN TRUCKING ASSOCIATIONS, INC., ADOPTED JUNE 15, 1983

It is the consensus of the American Trucking Associations, Inc. that the Interstate Commerce Commission should be required to fully and properly implement and administer the Motor Carrier Act of 1980. This will require that Congress be more receptive and responsive to the factual conditions presented at the oversight hearings

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during the last two years. It requires that the President nominate the Congress confirm, as Commissioners, persons who understand the motor carrier industry, and who, consistent with the spirit and intent of the provisions in the Motor Carrier Act of 1980, implement the clear intent of Congress. Neither the language in the 1980 Act, nor its legislative history indicates that Congress intended for the Commission to disavow its duty as an arm of Congress and administratively deregulate the industry.

Over the years, collective ratemaking has proven to be the most effective and economic means for effectuating the National Transportation Policy. It has provided the type of motor carrier service that the public needs and at rates that are reasonable and nondiscriminatory. The record before the Motor Carrier Ratemaking Study Commission establishes that over eighty percent of the persons submitting views are supportive of collective ratemaking. Furthermore, the record clearly demonstrated that the continuation of a national transportation system is dependent upon the cooperation and interconnection among carriers, which is only possible if Congress continues to afford antitrust immunity to the collective process.

We reaffirm our belief that the nationwide system of regular route motor common carrier service is working in the best interests of the national economy and the shipping public, and that this system of service provides the only feasible and sensible means for fulfilling the National Transportation Policy. Therefore, it is necessary to take whatever steps are required to:

(1) Protect and preserve the collective ratemaking provisions that are authorized by the 1980 Act; (2) Repeal the prohibition against the collective ratemaking of new released-value rates and single-line rates; (3) Support legislation to eliminate the single-line and released-value rate limitations that are scheduled to be imposed in 1984; (4) Oppose any legislative proposal to further deregulate the industry; and (5) Protect and preserve antitrust immunity for intrastate collective ratemaking.

EXAMPLES OF THE FAILURE OF THE I.C.C. TO REGULATE RATES

A. Introduction

The Commission's attitude toward rate regulation is best exemplified by its proceeding in Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.* Instituted more than two years after the Act in October, 1982, the I.C.C. called for public comments on pricing practices of motor carriers of property since passage of the MCA. It announced that these public comments "should promote certainty, clear the air, and encourage rate innovation." Despite these laudatory aims, the format of the proceeding virtually assured that nothing contributable would come of it. Instead of a formal rulemaking proceeding leading to precise ratemaking standards, or even a formal policy statement, the I.C.C. had merely called for comments. The comments were submitted by mid-January, 1983, but nothing was heard from the I.C.C. until September 13, 1983, more than three years after the Act when it issues a "Report". One hundred eight entities—motor carriers, trade associations, shippers, and federal agencies-contributed comments on every aspect of current ratemaking. The comments made clear the uncertainties which carriers and shippers face today: which pricing techniques are legitimate competition and which violate the MCA? What, if any, oversight of pricing does the I.C.C. intend? What is the I.C.C.'s interpretation of the sections of the 1980 Act which set standards in pricing? The I.C.C., in its "Report," refused to set standards.

Thus, today carriers and shippers are still faced with a total lack of pricing standards. The I.C.C. steadfastly refuses to act in utter disregard of the governing statutes which categorically state that rates shall be reasonable, non-discriminatory, fair, not destructively competitive, and free of predation. In section 10101 of Title 49, Congress sets forth its transportation policy which declares that it shall be the goal of motor carrier regulation (and therefore, the I.C.C.) to "encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices."

Sections 10701 and 10708(d) of Title 49 reinforce the requirement that rates be reasonable. Section 10701 states plainly that a motor carrier rate for a service subject to the Commission's jurisdiction "must be reasonable." Section 10708(d) precludes a challenge to the reasonableness of a rate falling within the zone of rate freedom (ZORF) on the grounds that the rate is too high or too low, but otherwise leaves the requirement of reasonableness intact.

Section 10741 of Title 49 prohibits discrimination in pricing by forbidding the use of special rates, rebates, or other devices as a means of offering a service to one party that is not offered to another party on like traffic.

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Section 10708(d) gives the I.C.C. power to "suspend and investigate proposed rates on the basis that such rates constitute predatory practices . . . ." However, the I.C.C. has not entered into a significant formal rate investigation since the enactment of the MCA, some 3 years ago.[1]

B. Ratemaking

Notwithstanding such provisions, the Commission and its employee boards refuse to suspend or investigate even when its own staff finds reason to do so. For example, in 1982, in Suspension Board Case No. 70832, a relatively large trucking firm headquartered in the midwest proposed a full 25 percent rate reduction on all minimum-charge, less-than-truckload (LTL), and other specified shipments. The I.C.C. authorized the reduced rates on less than statutory short notice. Two competing carriers, in formal protests, objected that the reductions were discriminatory—because the discounts were available only to shippers within a 10-county area—and predatory—because the reduction established rates below cost and because they were instituted principally to capture the traffic being hauled at reasonable rates by the protesting carriers.

Through an FOIA request, one of the protesting carriers learned that the employee Suspension Board of the I.C.C., which recommended the reductions did so in consideration of the Commissioners' personal philosophy that any reductions in the name of competition was justified. That employee Board acknowledged that the first quarter of 1982 under the former rate levels that the proposing carrier's total expenses were 14 percent higher than its total revenue. Yet, no evaluation was given to the fact that the even lower revenue produced by the 25 percent discount would inevitably lead to even greater losses.

The employee Board and the Commissioners themselves refused to consider, as is their responsibility, the protesting carriers' argument that rates below variable costs are presumed predatory; are destructive to stability and fair competition; and are inconsistent with the National transportation Policy.

Thus, the proposing carrier was allowed to put into effect a selective 25 percent rate reduction of a substantial scope—despite the fact that it was in disparate financial circumstances and despite the fact that the protesting carriers made a *prima facie* showing that the reduced rates were discriminatory and predatory. Under fair and impartial regulation, the public and protesting carriers had a right to expect that such destructively completitive discounts would, as a minimum, be placed under investigation before goint into effect. Under such a procedure, the proposing carrier would have the right to fully justify such discounts, or cancel them.

The I.C.C.'s action in this case is not an isolated example. In Suspension Board Case No. 70898, a carrier filed a discount tariff, effective August 23, 1982, proposing an across-the-board 25 percent reduction in rates on shipments of automobile parts and related commodities from points in 12 Middle Atlantic and New England states and the District of Columbia to a plant at Newark, DE. The reduction was protested by a competing carrier. Evidence presented showed that the reduced rates were noncompensatory and that the proposing carrier would sustain losses on the traffic at all weight brackets and in all traffic lanes.

Memoranda obtained from the Commission under the Freedom of Information Act reveal that Commission staff concurred that the proposed 25 percent discount was noncompensatory. On August 19, 1982, the Chief of the Commission's Section of Cost Analysis wrote to the Chairman of the Suspension Board, the Cost Section finding that (1) the cost evidence was developed in an acceptable manner, and (2) the evidence accurately represented that the proposed 25 percent discount would produce revenues far below the costs of service.

Notwithstanding this internal agency finding, the Commission's Suspension Board refused to give any weight to this evidence and voted not to suspend or investigate the reductions. The Commission's Appellate Division also refused to suspend or investigate the noncompensatory rates.

In Suspension Board Case No. 70886, a large New England based carrier of general freight proposed rate discounts ranging from 25 to 80 percent on various commodities moving between Baltimore, MD, and points in 12 eastern and midwestern states, to become effective August 17, 1982. Three competing motor carriers protested and presented evidence showing that the proposed rates were noncompensatory and that the proponent would sustain losses on the involved traffic. Again, the Com-

[1] On the other hand, since they continue to see the national commodity classification as objectionable to their philosophies they have entertained several cases for the purpose of placing obstacles in the way of an effective classification system. Examples of these counterproductive Commission actions are given at the end of this attachment.

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mission's Cost Section agreed indicating that the evidence accurately depicted that the traffic would be transported for less than the cost of providing service. This fact was given to the Suspension Board in a memo dated August 11, 1982. The Board, again gave no weight to the Cost Section's findings, and voted not to suspend or investigate. The Commission's Appellate Division reached the same result and the noncompensatory rates became effective.

In Suspension Board Case No. 70842, this same New England carrier proposed discount rates ranging from 10 to 25 percent on numerous specified commodities from and to points in 14 Middle Atlantic and New England territories to become effective June 13, 1982. This was protested by two competing motor carriers on the ground that the rates were noncompensatory and produced revenues far below the cost of providing the service. Again, in a memo to the Suspension Board the Cost Section found that the proposed rates were below the variable cost of providing service. Again, the Suspension Board voted not to suspend or investigate and, on appeal, the Commission's Appellate Division also declined to suspend or investigate allowing the noncompensatory rates to become effective.

Similarly, in Suspension Board Case No. 70695, involving reduced rates on plastic materials and products and other articles, from North Andover, MA, to points in 12 Middle Atlantic states, effective January 18, 1982, two competing carriers protested and introduced 50 examples of comparing variable costs to revenues to show that the proposed rates were noncompensatory. In a January 13, 1982 memo to the Suspension Board, the Cost Section found that the facts demonstrated that only 2 of the 50 examples produced revenues which covered the variable costs. The Suspension Board again ignored the cost evidence and instead relied on the Commissioners' economic philosophy in refusing to suspend or investigate. The Appellate Division affirmed and the noncompensatory rates became effective as scheduled.

In Suspension Board Case No. 70812, a major carrier of general commodities proposed a discount program to become effective May 31, 1982 to apply at all points in the U.S. on minimum charge, less than truckload, any quantity and truckload shipments. To qualify the discount rates, shippers had to request in writing to the carrier that they be allowed to participate and provide addresses of at least 100 facilities to be included in the program. Meeting this requirement, the shipper could obtain an 8 percent discount provided one of its facilities shipped a minimum monthly amount of 130,000 pounds of minimum charge, LTL, or any quantity rated traffic by the carrier. Additional discounts ranging from an additional 1 to 10 percent on top of the basic 8 were also available dependent on the amount of inbound freight charges paid by the shipper to the carrier.

The discounted rates were protested by 2 small motor carriers operating in the Middle Atlantic territory. They demonstrated that the discounts unlawfully discriminated against shippers unable to "qualify" for the discounts but who would in many instances be purchasing the same transportation service but at substantially higher rates.

Information obtained from the Commission under a Freedom of Information Act request shows that the Commission's Office of Transportation Analysis recommended to the Suspension Board that the rates be investigated because of their "discriminatory nature," *i.e.,* shippers with less than 100 plants or facilities would be automatically disqualified from participation. Nevertheless, on May 26, 1982, the Suspension Board voted not to suspend or investigate and the Commission's Appellate Division affirmed that vote on appeal and the discriminatory rates became effective.

In addition to the above demonstrations of the Commission's refusal to responsibly regulate, it has also issued several decisions where it has simply ignored the provisions of the Act and/or the will of Congress. For example, on October 5, 1983, the I.C.C. issued a decision entitled *National Bus Traffic Traffic Association, Inc., Automobile Windshields and Window Glass,* 367 I.C.C. 691. That proceeding involved a released rates application by a bus rate bureau on behalf of its member bus carriers whereby they would agree to accept for transportation automobile window glass in bus express service but without assuming any liability for loss or damage during shipment. Over the objections of the shipper members of the National Small Shipments Traffic Conference, Drug and Toilet Preparation Traffic Conference and Freight Traffic Service, the I.C.C. found the proposal to be just and reasonable. In reaching this conclusion, the Commission interpreted the released rates provisions of the Act at 49 U.S.C. § 10730.[2] In so doing, it took the opportunity to voice its opinion concerning the interpretation of the section with respect to carriers of property.

[2] Former Section 20(11) of the Interstate Commerce Act (now 49 U.S.C. § 10730) incorporated the common law rule that a common carrier is fully liable for loss, damage, or injury to proper-

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In interpreting Section 10730 as amended by the 1980 Act, the I.C.C. says new Section 10730(b) authorizes released value rates for single line movement only. See p. 693 of the decision. On the following page of its decision in a footnote, the I.C.C. again states that section 10730(b) limits its authorization to the establishment of single line released rates. Thus, reading this interpretation into the context of Section 10706(b)(3)(c) [prohibitions or discussions and voting on future released rates], the import of this decision is to preclude the establishment independently or collectively of any joint line released rates after Janaury 1, 1984. Such a severe limitation was obviously not intended by Congress as evidence by the absence of such limiting language in section 10730(b). Congress wanted to enable carriers to offer more in the way of price/service options—not to limit that function to less than was allowed. Nowhere in that section can there be found language limiting the establishment of released rates to single line movements.

A far reaching demonstration of the I.C.C. abdicating its responsibility over rate regulation is its much publicized action in Ex Parte No. MC-165, *Exemption of Motor Contract Carriers from Tariff Filing Requirements.* Again, under a severely contorted reading of the statute, the I.C.C. found within itself the power to dispense with the filing of any tariffs by motor contract carriers. Accordingly, in June, 1983, it announced that such carriers no longer need file tariffs with the Commission as required under sections 10702, 10761, and 10762. This decision is pending judicial review in the U.S. Court of Appeals for the District of Columbia Circuit. While the Court initially issued a stay of the Commission's decision, it lifted that stay on September 28, 1983. Consequently, since that date, no motor contract carrier need have any rates on file with the Commission. This thwarts the ability of carriers to effectively compete in as much as they have lost the ability to know what contract prices and services exist. It undermines shipper ability to utilize competition as well since it removes a basic assumption of the free market theory namely that all sellers and buyers know the market of services and prices. Instead of promoting fair and effective competition, it limits it.

The CHAIRMAN. Gentlemen, I have no other questions.

Thank you very much.

We will conclude with Rita Bontz and Marshall Siegel.

Thank you for being so patient and waiting this long.

Ms. Bontz, go right ahead.

STATEMENTS OF RITA BONTZ, DEPUTY DIRECTOR, TRUCKERS ACTION CONFERENCE, AND MARSHALL SIEGEL, EXECUTIVE DIRECTOR, INDEPENDENT OWNER-OPERATORS ASSOCIATION

Ms. BONTZ. Good afternoon, Mr. Chairman.

Thank you for the opportunity to appear before you. I am sorry that the owner-operators story is the last to be heard. Could that be that it is the best and that you have saved it for the last?

I am here as a truck owner-operator. My husband and I have owned and operated a one-truck business since 1962. I am also here on behalf of the Truckers Action Conference, the Maryland Independent Truckers and Drivers Association, Forward America, the Central Pennsylvania Truckers Association, and the Owner-Operators of America Association.

And I have brought with me three owner-operators. I would like to introduce to you Mr. Theodore Brooks, Mr. Dorsey Musselman, and Mr. William Duley.

I will be making the statement.

You do have my statement. I am glad. I paid $29.54 to have all those made yesterday, and I want to make sure everybody reads them.

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ty committed to it for transportation and that any attempt to limit liability is void. However, the Act permitted the Commission to grant exemptions from full liability when rates dependent on declared or agreed value were found just and reasonable. Released rates could be established collectively or individually.

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The CHAIRMAN. As a matter of fact, I can assure you, with the two exceptions, we had all of the statements in before last night, and I spent the night before going through the statements, so there are only two that I have not read by this morning.

Ms. BONTZ. We believe the Congress intended to guarantee a safe, dependable and efficient truck transportation system when it passed the Motor Carrier Act; that the Motor Carrier Act has not, done that for several reasons, including the recession and the actions of the Interstate Commerce Commission.

Many owner-operators who have survived the past 2 years are in a precarious financial position. These could have been golden days for us. The new law gave us access to what had been largely unattainable territory to a person with only one truck. We can now get our own operating authority with little problem, thank you. But how much help is that when the freight rates are so low that in most instances, or certainly many, they are below the cost of operation?

I can cite examples of truckers who have obtained operating authority, bought the necessary equipment, signed a contract with a shipper, and when it was time to haul the freight, the shipper said cut the rate or it is no deal.

The most devastating effect of the Motor Carrier Act is the predatory rate cutting. We are in a serious rate war, one that adversely affects service to the public and the public safety without benefitting consumers.

I have with me a few examples of how rates have fallen. Who is to blame for the rate cutting? First, there are those shippers who pit one carrier against another as they try to get the cheapest rate. Many cross the line from honest competition to predatory rate cutting. And then there are those carriers who are too weak to say no, and then there are the dishonest agents who gouge the truckers. It is not uncommon for an agent to quote a shipper one price and quote a much lower one to the trucker and pocket the difference. And in order to get cheap freight hauled, dispatchers often quote a trucker one rate, and when he is paid for hauling the freight, the trucker finds out he has been paid at a much lower rate. If the trucker questions the difference, he is told: "The dispatcher made a mistake." There is no legal recourse in that case.

And once a trucker hauls a load, there is no guarantee he will be paid for it. For example, I can tell you about one trucker who hauled a load 9 months ago, and he has not been paid yet. We have written to the ICC regional office several times, and we have not had a single answer. We have given up. It seems no one is minding the store.

We believe the climate caused by the Motor Carrier Act and the subsequent actions of the ICC encourage the practices I have described. The Motor Carrier Act was to encourage competition and lower consumer prices.

These are noble goals, and there is competition. The rates have fallen, and I do not see any evidence that the consumer prices have come down. And this bill was to save consumers billions of dollars.

The competition, Senator, should be for quality of service as well as price. Many reliable carriers have disappeared. Many who survived do so by increased use of owner-operators. They find us at-

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tractive because they can pass so many of their operating costs on to owner-operators. We must absorb those costs. We cannot pass them on to anyone. We are just trying to hang on.

In order to stay in business, many truckers are forced to skimp on equipment or maintenance. This is having a serious effect on public safety. Those who are unable to stay in business are being replaced by inexperienced, untrained newcomers who are not equipped to continue the quality of service this nation needs.

We believe the ICC has gone far beyond the intent of Congress. The Commission seems to be set on a course of complete deregulation, very obvious today. It is creating, we believe, an illusion of vigorous competitive effort in the industry which, in reality, borders on desperation.

We propose the following: That no legislation to further deregulate trucking be considered until there is sufficient time to allow the industry to adjust to the regulatory changes called for by the Motor Carrier Act; that the ICC be required to cease its administrative course of deregulation; and that the ICC be required to enforce the existing law; and that it be provided with the resources to do so.

We urge the Congress to reassert its constitutional mandate and to regulate the flow of commerce between the States. We urge you not to abdicate this precious responsibility to the executive branch.

Thank you, Senator.

[The statement follows:]

STATEMENT OF RITA BONTZ, DEPUTY DIRECTOR, TRUCKERS ACTION CONFERENCE

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you to present a statement of the effects of the Motor Carrier Act of 1980. I am here as a truck owner-operator. My husband and I have owned an operated a 1-truck business since 1962 and we have been under lease to the same motor carrier since 1968.

I am also here to present the views of the Truckers Action Conference, of which I am deputy director; the Maryland Independent Truckers And Drivers Association, of which I am president; and Forward America (a coalition of citizens who are interested in transportation issues), of which I am a member of the board of directors and the exceutive committee. My statement is also on behalf of the Central Pennsylvania Truckers Association, located in Bedford, Pennsylvania, and the Owner-Operators Association from Hamburg, New York.

We believe that the Congress intended to guarantee the continuation of a safe, dependable and efficient truck transportation system when it passed the Motor Carrier Act of 1980. In our opinion, the MCA has not accomplished that for several reasons, including an economic recession and the actions of the Interstate Commerce Commission. There are parts of the trucking industry which are in a much worse situation today than they have ever been. For example, many of the owner-operators who have survived the past two years are in a precarious financial position. These could have been golden days for us. The new law gave us access to what had been largely unattainable territory for a person with only one truck or just a few trucks. We can not get our own operating authority with little problem. But how much help is that when freight rates are so low that in many instances they are below the cost of operation?

I can cite examples of truckers who obtained operating authority, had a signed contract with a shipper, and when it was time to haul the freight, the shipper insisted that the rate be cut.

If you were to ask a group of owner-operators to name the most devastating effect of the Motor Carrier Act, they would say "rate-cutting." We are in a serious rate war—one that adversely affects both service to the public and public safety without benefiting consumers.

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I have with me some examples of how rates have fallen. I would like to submit then for the record. I would also like to say where we believe the blame lies for the rate-cutting.

First, there are the shippers who pit one carrier against another as they try to get the cheapest rate. They cross the line from honest competition to predatory rate-cutting.

And there are the dishonest agents who gouge the truckers. It's not uncommon for an agent to quote a shipper one price and quote a much lower one to the trucker. For example, an agent could tell a shipper that he could move the freight for $1,000, tell the trucker—who is on a 75/25 percent revenue split—that he has a load paying $800. the agent takes the 25 percent, leaving the unsuspecting trucker $600, instead of the $750 he should get.

In order to get cheap freight hauled, dispatchers often quote a trucker a rate—one the trucker thinks is profitable—and when he is paid for hauling the freight, the trucker finds he has been paid at a much lower rate. If the trucker questions the rate, he is told, "The dispatcher made a mistake." There is no legal recourse in this case.

And once a trucker hauls the load, there's no guarantee that he or she will be paid for it. I can tell you about a trucker who hauled a load nine months ago and he hasn't been paid yet. We have written to the ICC regional office several times, and we haven't had an answer. We have given up. It seems that no one is minding the store.

We believe that the climate caused by the Motor Carrier Act and the subsequent actions of the Interstate Commerce Commission encourage the practices I have described.

The Motor Carrier Act was to encourage competition, lower consumer prices, conserve energy, increase productivity, and remove burdensome Federal regulations. These are noble goals. Unfortunately, they were introduced at a time when the country was entering a recession, energy costs were rising, and inflation was soaring. There is competition. As we have stated, the rates have fallen but we do not see evidence that consumer prices have come down as the result. This bill was to save consumers billions of dollars. Where are the savings? We favor saving money for consumers. But how can consumers be served if truckers are put out of business?

The competition should be for quality of service as well. Many of the old, reliable companies have disappeared. Many who survive do so through an increased use of owner-operators. They find us attractive because they can pass so many of their operating costs on to us. We have no voice in setting rates. We must absorb the rising operating costs and try to hang on. We can't pass our costs on to anyone. In order to stay in business, many truckers skimp on maintenance or equipment replacement. This has a serious effect on public safety. Those who are unable to stay in business are replaced by inexperienced, untrained newcomers who are not equipped to continue the quality of service this Nation needs. In addition to a reduced level of service, the level of professionalism and quality of drivers is diminishing. A short ride down an interstate highway will illustrate my point.

In addition to the disastrous effect of rate-cutting, we find that Canadian and Mexican motor carriers are coming into this country through eased entry provisions. They are having a field day at the expense of the American trucker. We cannot cross their borders and operate with the same freedom as they do in the United States.

We believe that the Interstate Commerce Commission has gone far beyond the intent of the Congress in carrying out the provisions of the Motor Carrier Act. The burdensome regulations were to be removed while leaving those which would protect the public's interest. It is our concern that too many regulations are being removed.

The Commission seems to be set on a sourse of complete deregulation of the trucking industry. It is creating an illusion of vigorus competitive effort which in reality, borders on desperation. We need to strengthen the trucking industry, not throw it to the winds.

We propose the following:

That no additional legislation to further deregulate the industry be considered until there is sufficient time to allow the industry to adjust to regulatory change called for by the MCA and to give more time for an economic recovery.

That the ICC be required to cease: its administrative course of deregulation.

That the ICC be required to enforce the existing law and that it be provided with the resources to enable it to do so.

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We urge the Congress to reassert its Constitutional mandate to regulate the flow of commerce between the states. We urge you not to abdicate this precious responsibility to the Executive Branch.

Thank you, and I will be pleased to answer questions.

The CHAIRMAN. Thank you.

Mr. Siegel.

Mr. SIEGEL. Thank you, Mr. Chairman.

One of the testimonies I am sure you did not get to read was ours, because we only got it to you yesterday, and there were 18 pages plus 3 appendixes, and I graciously left 1 more appendix here this morning in answer to Thomas Gale Moore.

Mr. Chairman, thank you for asking us here. I appreciate the opportunity to testify on a matter of paramount interest to our membership.

As executive director of the Independent Truck Owner-Operators, I have a concise statement for you.

The Independent Truck Owner-Operators Association, called I-Too for short, is a group of over 5,100 owner-operators, merchant vendors who sell to owner-operators, finance companies who finance owner-operators, and trucking companies that employ owner-operators.

This is an organization of, by and for the owner-operator. Other classes of members of the association may join only after they are investigated and approved as being a person or persons who have a record of dealing fairly with owner-operators.

I-Too has members in every State of the Union, and our membership is growing rapidly. The organization is about 2 years old, and we represent a responsible alternative to the owner-operator, unlike those organizations that were responsible for or supported the trucking strike earlier this year. We thought it unwise at that time and actively opposed it.

I-Too works for the good of the owner-operators and assists him or her in getting into business and staying in business through furnishing of operational information, general business advice, and as an information disseminator.

Disaster has overtaken the independent owner-operators since 1979, largely because of the way in which the ICC has implemented the Motor Carrier Act of 1980, coupled with the failure of this committee to exercise appropriate oversight. Compounding that problem has been the failure of this committee to act expeditiously on nominations of nonmajority party members to the ICC.

The hearing notice sets forth three questions that you are specifically interested in, and I will address them in turn.

First, as to the Motor Carrier Act of 1980, the effects on the trucking industry and labor have been disastrous due to irresponsible ICC actions. In 1979 over 300,000 owner-operators were at work. Today that number has decreased to approximately 100,000. This decrease has been caused by poor regulation rather than economic conditions. If the Interstate Commerce Commission had acted responsibly to curb rate cutting, then tens of thousands of owner-operators would still be in business.

Owner-operators, as well as trucking companies, are eating up their capital resources in order to merely stay in business in the hopes that things will get better.

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The Interstate Commerce Commission has shirked its duty to regulate rates. Many shippers have not fared well either. LTL freight prices have gone through the roof, but owner-operators do not transport LTL in significant measure.

Discounts have been granted to large shippers such as Lever Bros. and members of the National Association of Manufacturers, but the small shipper or the average shipper has not benefited nearly as much. The consumer has not seen any cost savings, but instead, these cost savings have gone to the bottom line of the large manufacturers.

Second, you asked whether further reform of the trucking industry is needed. If you are talking about true reform, then the answer is yes. If you are talking about further deregulation, the answer is unequivocally no.

The first place to start reform is at the Interstate Commerce Commission. The present Commissioners should be removed in one way or another and replaced with fair-minded, competent individuals who are willing to do their sworn duty to regulate the industry. There must be tightening of entry controls to make the trucking industry reasonably stable, reasonably profitable but not impossible to get into. A line between regulation and complete deregulation must be drawn and adhered to. Failure to do this will result in a boom and bust cycle in the trucking industry which will benefit no one but the railroads.

Third, you want comments on the Interstate Commerce Commission's implementation of the act. In one word, miserable. The ICC has not followed the intent of the act and has failed to be a responsible regulator.

During approximately the past year the Commission has been slapped in the face with four mandamus orders from the U. S. courts of appeals, and in one case a contempt request was filed. Only then did the Commission act in accordance with the court mandate.

Enforcement has been scandalous by its absence. Authority has been granted to carriers with principals in prison and to other carriers with miserable safety records. Even the Department of Transportation is currently suing the ICC in the Court of Appeals of the District of Columbia circuit for giving authority to an incompetent operator.

A financial fitness showing is not required any more, but instead the Commission takes the approach that the marketplace is the best selector of the fit. The Commission is leading us in the direction of a demolition derby which was never the intent of Congress. It must be halted.

In closing may I say the Motor Carrier Act of 1980 does not provide for deregulation; it provides for changed regulation. The deregulation that is pushed by the Interstate Commerce Commission has not worked for the trucking industry, but a runaway Interstate Commerce Commission cannot or will not see this. The Commission is even thumbing its nose at Congress in the rail boxcar exemption case, and you are apparently letting them get away with it.

The failure to act to restore sanity to the way the Interstate Commerce Commission operates will force us into the political arena to seek redress.

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The situation is dangerous. We are in the 11th hour. In the name of fairness and justice, we beseech you for help. Owner-operators have the right to earn a decent living, and that is all we ask of you and the Commission. What the Commission has done makes this beyond our reach at this time.

[The statement follows:]

STATEMENT OF MARSHALL SIEGEL, EXECUTIVE DIRECTOR, INDEPENDENT TRUCK OWNER-OPERATORS ASSOCIATION

Mr. Chairman and members of the Committee, I want you all to know that I appreciate the opportunity to appear and testify on this matter of paramount interest to our membership. The Independent Truck Owner-Operators Association, called I-TOO for short, is a group of over 5,100 owner-operators, merchant vendors who sell to owner-operators, finance companies who finance owner-operators, and trucking companies that employ owner-operators. It is an organization of, by and for the owner-operator. Other classes of members of the association may join only after they are investigated and approved as being persons who have a record of dealing fairly with owner-operators.

I-TOO has members in every state of the union, and our membership is growing rapidly. The organization is about two years old. We represent a responsible alternative to the owner-operator, unlike these organizations that were responsible for or supported the trucking strike earlier this year. We thought it unwise at the time, and actively opposed it. I-TOO works for the good of the owner-operators, and assists him or her in getting into business and staying in business through furnishing of operational information, general business advice, and as an information disseminator. Up to this point, we have been relatively inactive in politics, but I can assure you that we intend to make certain that our membership and their friends are aware of what the administration and this committee have done and are doing to and for our members and others in the trucking industry.

First of all, I know that what I am about to tell you will not be liked by certain members of this Committee, but I intend to tell it like it is. For too long, it appears that members of this Committee have either been insulated by their staffs from the reality of our problems, don't care about our problems, or are so ideologically hell bent to deregulate everything that some of you may not care what the facts are.

In my opinion, the Motor Carrier Act of 1980 is fairly decent piece of legislation that has been essentially ignored by the Interstate Commerce Commission, in its headlong rush to commit institutional suicide. As I have earlier stated on several occasions, those members of the Interstate Commerce Commission who cannot fairly read and interpret the law, which does require regulation, ought to have resigned a long time ago. It is absolutely incredible that this Committee, charged with oversight of the Interstate Commerce Commission, should have allowed the situation to deteriorate to the point that it is in. Your oversight hearings to this point have been a cursory kiss-off. Nothing of any substance has emerged from them.

The foot dragging that has gone on in this Committee concerning appointments to the Interstate Commerce Commission underscores the inattention which this Committee has given to transportation regulatory matters. One nomination, that of Paul Lamboley, has been languishing almost a year. Another nomination, that of Jane Holt, has been in limbo since last April. I do not suggest that this Committee only is culpable; the administration has still not nominated a third non-majority party member to the Interstate Commerce Commission. This is positively disgraceful. Transportation regulation is entirely too important a factor in our society to be ignored like it has been ignored to date. Railroads are getting away with bloody murder, and are keeping two sets of books—one in which their track structure is accounted for using the so-called betterment accounting system; this is what is reported to the ICC under IC regulations. But, to their stockholders, the railroads use a depreciation system of accounting, which is called for by the Securities and Exchange Commission regulations. A comparison of the botton line results for a railroad could mean the difference between a $20 million loss under betterment accounting, and $25 million profit under depreciation accounting for the same year. Yet all we hear about is how revenue inadequate the railroads are. It is baloney, political claptrap, and is another clear indication of how biased the Interstate Commerce Commission is in favor of railroads and, also I might add, against the trucking industry.

It is important to note that the major proponents of trucking deregulation—and that is what has occured, despite what the law says—are economists and those ob-

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sessed with an ideological approach rather than a pragmatic approach to our problems. These same economists can't predict a downturn in the economy, can't predict when the economy will turn up, can't predict the length of the recession, can't predict the length of a recovey, and in fact, can't predict anything very well. Such a group does not inspire confidence, as has been pointed out in a recent book by M.I.T. economist Lester Thurow, entitled, "Dangerous Current: The State of Economics."

The one thing that economists are certainly good for is analyzing those things that have happened in the past. Well, in the case of the trucking industry, and in particular with respect to owner-operators, the things that have happened in the past since 1979 have been unmitigated disaster. From approximately 300,000 owner-operators in 1979, the number has decreased to approximately 100,000. This drop in the number of owner-operators can only be described as an unmitigated disaster. The owner-operators have been made the economic kulaks of our modern day United States, and it is high time that you all realized this.

As you can tell, we are not very happy with the state of affairs. With this preamble, let me now discuss the issues mentioned in your hearing notice of September 15, 1983.

I. THE EFFECTS OF THE MOTOR CARRIER ACT OF 1980 ON THE TRUCKING INDUSTRY, SHIPPERS, LABOR AND CONSUMERS

The effects of the Motor Carrier Act of 1980 on the trucking industry and labor have been disastrous. As pointed our previously, approximately two-thirds of the owner-operators have been forced out of business by the direct effects of trucking deregulation as administered by the Interstate Commerce Commission. Owner-operators are true small business persons in the trucking industry, and we are the ones who have taken it on the chin from free market freaks that currently seem to be in control at the Interstate Commerce Commission. Now let me be certain that you all understand that I don't have anything against the free market. It is a fine and wonderful institution, to the extent that it works. But what you must understand, and what I don't think some of you do understand, is that you cannot have a free market in goods without transportation services to get those goods to the market place. Moreover, I am told by many shippers who use trucking service that a dependable, reliable, economical and fair transportation system is what is needed for our economy to work right.

Currently, there is unfair competition in trucking going on all over the country. Desperate carriers set rates so low that they can't possibly make any money. Trucking companies using owner-operators have to compete with other trucking companies that either don't know or don't care what their true costs of operations are. As a result, trucking companies do not pay and cannot pay owner-operators a fair amount. The owner-operator—and the trucking companies as well—are eating up their own capital resources in order to merely stay in business, in the hopes that things will get better. Responsible regulation would have prevented this.

The Interstate Commerce Commission has the authority, delegated to it by Congress in the Motor Carrier Act of 1980, to cut out the pernicious practices that have so far caused over 300 trucking companies representing a sizable percentage of industry capacity to go belly-up. But the regulated trucking companies that have ceased doing business, gone into bankruptcy, or severely curtailed operations are the mere tip of the iceberg, when you consider the 200,000 owner-operator that have been forced out of business.

In my opinion, the effect on consumers of all of the rate cutting that has gone on has been negligible; your large companies have simply retained in their own bottom line whatever they could in transportation costs saved. The administration of the Motor Carrier Act of 1980 thus far has resulted in tremendous reallocations of capital resources and profits in our society, to the extreme detriment of the trucking industry, including owner-operator and its labor. There have been negligible benefits passed on to consumers, in my opinion, particularly by large companies which belong to the National Association of Manufacturers, such as Lever Bros., Inc. Many shippers, particularly those of less-than-truckload freight, have thrown up their hands in disgust at the way the ICC is working these days, and in frustration have called for elimination of all anti-trust immunity for motor carrier rate bureaus. Indeed, many people think that what we have now is worse than nothing at all, so why not get rid of it. But that begs the issue: The problem is not the Motor Carrier Act of 1980 or the Interstate Commerce Commission, the problem in the Interstate Commerce Commission commissioners. I will have more to say about this later, at a more appropriate point in my testimony.

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The question of the impact of the Motor Carrier Act of 1980 on independent owner-operators have been asked of me by the Secretary of Transportation, and I replied to her in may letter dated May 3, 1983, a copy of which I have attached as Appendix A.[1] Things have not improved since then.

The overcapacity in the trucking industry has been rampant. This has been accentuated by policies of this administration and the Interstate Commerce Commission clearly designed to increase the railroad share of the intercity freight market. How, in the name of common decency, can those who are performing this conscious market reallocation speak in terms of letting the free market reign? Such hypocracy may be an everyday affair to you here in Washington, but to those of us in the hinterlands, is is positively nauseating.

Most of the comments that I have referred to earlier concern the truckload freight portion of the trucking industry. The situation is quite different in the LTL field. Of course, in the small package field, United Parcel Service (UPS) has a monopoly, save for that competition generated by the United States Postal Service and some miscellaneous, small carriers. This is because the cost of instituting an areawide or nationwide service for the fast transportation of small packages is exceedingly high. Concentration in this segment of the industry has increased to the point where there is essentially one nationwide non-governmental carrier.

With respect to the less-than-truckload (LTL) carriers (other than those carrying small packages) in the country, it is quite clear that the concentration is increasing dramatically as the medium sized carriers are forced out of business through the destructive practices engaged in by large carriers through the use of discounting tactics. A loss leader may be fine for a supermarket, but when applied in the trucking industry, it can drive companies out of business, and has done so. Yet our old standby, the Interstate Commerce Commission, doesn't want to take the trouble to really get into the situation. In Ex Parte No. MC-166, in a report served approriately enough on September 13, 1983, the Interstate Commerce Commission has again refused to establish standards for review of discounting and "innovative" pricing techniques. This is just another example where the Interstate Commerce Commission has refused to regulate rates, which it is charged by law with doing.

It has been said by academicians of some note that, within the next few years, there will be four or five giant nationwide LTL carriers, approximately 20 medium sized regional LTL carriers, and that will be about it. Already, the trend of bankruptcies involving medium sized LTL carriers foreshadows the final playing out of this trend. When the sixth largest carrier in the country (Spector—Red Ball) goes bankrupt, shouldn't that tell you a little something?

In the truckload freight business, there are some very large carriers, with the medium sized carriers being weeded out, and a large number of small carriers springing up. Conditions are chaotic, because of the lack of entry control, particularly as it relates to fitness, as well as to the need for new service. Overcapacity has been endemic, although it didn't have to be if the ICC had acted properly in controlling entry.

To summarize, it was not the effect of the Motor Carrier Act of 1980 on use that was disastrous, but it was rather administrative deregulation by the Interstate Commerce Commission that has caused our problems. I will address this aspect later, but it is necessary to understand that we do not condemn the Act, but only the actors.

II. IS FURTHER REFORM OF THE TRUCKING INDUSTRY NEEDED

Very few would return to the days of 1976, in terms of rolling back the deregulation clock. However, if reform is a code word for further deregulation, then certainly further reform is not needed. If, on the other hand, reform may be used in its true meaning, then yes, indeed, there is need for reform, as soon as possible, to reestablish stability in the trucking industry.

We propose that the issue of regulation be addressed pragmatically. There is no simple answer. We must find a position somewhere between total regulation and total deregulation, and then a reinvigorated Interstate Commerce Commission should proceed to get off their backsides and go to work, instead of pontificating about how marvellous it is that regulation really isn't needed.

Reform of the trucking industry can best be occasioned by reform of the Interstate Commerce Commission, and the way the commissioners are appointed. As I mentioned earlier in this statement, I suggested in my comments on S. 48 a better way for the appointment of ICC commissioners. Attached as Appendix B is a copy of

[1] The appendixes are in the committee files.

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my letter to Sen. Packwood transmitting the comments, which are themselves attached as Appendix C. Appendices B and C were also sent to all members of this committee and other key members of Congress. Such an approach would be analogous to a judicial nominating committee approach. It would eliminate the delays in appointment of commissioners, such as have occurred during the last three administrations.

There must be tightening of entry controls, to make the trucking business one which is reasonably stable, reasonably profitable, but not impossible to get into. The present statute, in the hands of a fair-minded commission, would do the job nicely. Rates must be regulated, both on the downside as well as the upside. You cannot have a boom and bust cycle in trucking, and expect to have a trucking system capable of meeting the needs of commerce as well as of national defense. Yet, in my opinion, this is exactly what has happened and what will happen again if responsible entry control and rate regulation are not implemented. Moreover, there must be a fair and impartial arbiter between shippers and carriers. If not the Interstate Commerce Commission, then it must be the courts. But it makes little sense to burden an already overburdened court system with additional work, when a perfectly good mechanism continues to exist for handling the problems. The mechanism will work, however, only if its operators—the ICC commissioners—get back into the business that they were commissioned to be in.

The Congress should give more specific instructions to the Interstate Commerce Commission, concerning regulation of entry control and rate regulation. Since the Motor Carrier Act of 1980 became law, not a single protestant to the granting of new operating authority has carried its burden of proof. Such a situation is ludicrous, and exhibits a basic dishonesty in approach to administering the Act.

I know that there are those among this Committee who want to totally deregulate the motor carrier industry, but I say to you that it is unwise in the extreme to do so. The grand experiment of deregulation is an ignoble failure, which has blighted the hopes and dreams of millions of people in this country associated with the transportation industry, including their families. Recognize reality; restore reponsible regulation; and recognize that if you do not, then the ultimate recourse of those unhappy with the system is the ballot box. I can assure you this has not been overlooked.

III. THE INTERSTATE COMMERCE COMMISSION'S IMPLEMENTATION OF THE ACT

The Motor Carrier Act of 1980 was passed with the support of the motor carrier industry, because it was thought that the Interstate Commerce Commission had to be statutorily directed away from the path of deregulation it was following. Rather than accepting the mandate of an amended National Transportation Policy, the Commission instead has elected to sacrifice the motor carrier industry—and particularly owner-operators—on the altar of the Free Market, to the god Competition. I respectfully submit to you that this was not the intended purpose of the Motor Carrier Act of 1980, and had it been perceived as such, then many of those who supported it and voted for it would not have done so.

The Commission has practically forgotten how to deny an application for new operating authority. No protestant—not a single one—has carried its burden of proof to show that granting of new operating authority would not be consistent with the public interest, under the entry standard contained in 49 U.S.C. 10922, Section 5 of the Motor Carrier Act of 1980. If common carrier authority has been easy to get, contract carrier authority has been even easier. Fitness of both classes of applicants has not been inquired into with *any* diligence. For example, it is a scandal that operating authorities have been granted to companies controlled by persons in prison. Likewise, operating authorities have been granted to companies having scandalously poor saftey records, even to the extent that the Department of Transportation itself is presently suing the Interstate Commerce Commission in the United States Court of Appeals for the District of Columbia Circuit, in *Department of Transportation* v. *Interstate Commerce Commission,* DC Circuit No. 83-1436. The Commission is no longer interested in the financial or operational fitness of applicants, with the result that companies having no ability to financially support decent safety programs are granted authority right and left. No financial data of any kind is required any longer in order to prove a company's fitness. Instead, the Commission takes the approach that the market place is the best selector of the fit. The Commission is leading us in the direction of a demolition derby, which was never the intent of Conress. A recent program on 20/20, narrated by Hugh Downs, pointed out that deregulation has caused safety to suffer. I agree.

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The Commission is not significantly interested in evidentiary proof of need for a proposed service any more, although the statute requires that evidence of need be shown before authority is granted. Those applications which have been denied have basically been denied on default theories, and nothing else. Even then, a protestant finds it difficult to prevail. For instance, the Commission practically demands that an applicant for new authority take authority to transport bulk commodities, even when an applicant states that it does not want such authority and will not operate it. The same is true of authority to transport refrigerated products. By forcing unwanted authority upon numerous applicants, the Interstate Commerce Commission has made a mockery of the common carrier obligation to serve.

Even after the direction by United States Courts of Appeals, the Commission has cavalierly gone its own way and done its own thing. Perhaps this is why the Commission has been hit with four writs of mandamus in approximately the last year. Moreover, in one of these instances, a request for a contempt citation was lodged with the court before the Commission finally got around to lackadaisically attempting to comply with the court's orders.

There is only one member of the Commission who apparently knows how to read the law, even though he states he does not agree with it. That is the Chairman. The other three members of the Commission are more distinguished by their knee-jerk adherence to the deregulatory party line than any skills as regulators. In fact, I have called for their resignations if they cannot obey the law and uphold it as they have sworn to do.

Enforcement has been almost lacking. Illegal truck operators run rampant without challenge. Rates are being charged that are not now and never have been on file with the Commission. Shippers seek and receive rebates. And what do the present-day ICC commissioners do about all of this? Well, I would commend your attention to the transcript of the Commission's closed conference on enforcement matters, last fall. The aroma that arises from the document is execrable. Nobody wants to enforce the law. One commissioner says that bribes are ok. Another commissioner says that he doesn't propose to put up with gumshoe tactics by the enforcement staff. If it were not so expensive, I would have attached a copy of the transcript to this statement. I truly think that each member of this Committee should read that transcript and judge for himself just what kind of enforcement effort can be expected from the group of Commissioners.

It has often been said that if this country goes down the tubes and is beaten by the communists, it will be because of internal subversion, and not because of external factors. If the motor carrier regulatory system in this country goes down the tubes, then it will likewise be from subversion within. Make no mistake about it: Several of the commissioners have absolutely no intention of regulating pursuant to the Motor Carrier Act of 1980. They should be removed, in some fashion, so that they could be replaced with dedicated and fair-minded public servants who are knowledgeable in transportation matters before they are appointed. For too long, the Interstate Commerce Commission has been considered a third-rate body, to be staffed in many cases with commissioners of like ability. We are now seeing the culmination of that trend.

Deregulation has not worked. It has caused problems in the airline industry, in the motor carrier industry and in the railroad industry. You have a runaway Interstate Commerce Commission on your hands. When two-thirds of the Senate, as well as sizable number of members in the House of Representatives, tells the Commission that it is unhappy with the actions in the rail boxcar case, and the Commission in effect thumbs its nose at this Congress by refusing to even hold further hearings, then does anyone really have to tell you more that something is wrong? Are you going to do something about it, or are you just going to go along and do business as usual? The one thing I can assure you is this: Your failure to act to restore sanity to the way the Interstate Commerce operates will force us into the political arena to seek redress. The situation is dangerous; we are in the eleventh hour; in the name of fairness and justice, we beseech you for help. I-TOO believes in the dignity of work, and in the right of every man and woman to earn a decent living. That decent living is presently beyond the reach of the owner-operators of this country because of what the Interstate Commerce Commission has done to us.

The CHAIRMAN. Let me ask you something, Mr. Siegel. Do you think that owner-operators ought to have the right of entry without unreasonable restriction?

Mr. SIEGEL. Yes and no. Come into the marketplace I think the ICC Chairman said were 259 owner-operators out of now 100,000—

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The reason that owner-operators have not come in is that, No. 1, they have not had the money to do so, and No. 2, they realize that once they do come in and get authority, just like Ms. Bontz says, the shipper says well, yes, I will support you if you want to haul for me for x number of cents. And the marketplace as far as the rates go continually gets depressed, so the owner-operator comes in and says what is the sense in my filing for my authority under eased entry——

The CHAIRMAN. Do you think that owner-operators ought to have the right of entry without undue restriction?

Mr. SIEGEL. Without undue restriction, no. There has to be some restriction.

The CHAIRMAN. What should those restrictions be?

Mr. SIEGEL. They have to meet, naturally, financial and safety.

The CHAIRMAN. What do you mean financial safety?

Mr. SIEGEL. Security. In other words, they should have the same rights as a motor carrier should have as far as an owner-operator entering the free marketplace. They should have insurance, proper insurance. They should have proper equipment. They should keep it in safe condition, in safe repair, and the motor carriers have to do the same thing. If you just allow eased entry into it, a man coming into the marketplace with four or five payments down on his truck or trailer is going to get authority. He is going to make one haul for a shipper, and he is going to be gone.

The CHAIRMAN. When you say financial safety, I want to make sure you are not talking about a guaranteed profit.

Mr. SIEGEL. No; financial security. He should have money in the bank to support himself, and the only way he does that, Mr. Chairman, is if he is working as an owner-operator. He has got to be able to make a profit.

The CHAIRMAN. Should the Government guarantee him the profit?

Mr. SIEGEL. The Government does not guarantee it to him now.

The CHAIRMAN. No. should they?

Mr. SIEGEL. No; they should guarantee him the opportunity to make a fair and decent living.

The CHAIRMAN. How?

Mr. SIEGEL. By forcing the ICC, which is an arm of Congress, to administer the Motor Carrier Act in the way it was intended.

The CHAIRMAN. We are considering possibly changes in the act. This is where I want your advice. Should the ICC guarantee the person a profit?

Mr. SIEGEL. The ICC should not guarantee anybody a profit. The motor carrier should guarantee the owner-operator a profit, the motor carrier who he runs for, is under permanent lease to, or the broker who he trip-leases to.

The CHAIRMAN. Should guarantee him a profit?

Mr. SIEGEL. Yes, sir. instead of predatory rate cutting.

The CHAIRMAN. So that everybody that gets in with relatively easy entry should be guaranteed a profit by somebody?

Mr. SIEGEL. Well, they should be guaranteed this: They should not be forced to run under predatory rate cutting and by eliminating the predatory rate cutting, that allows the owner-operator to have a marginal profit built in.

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The CHAIRMAN. In other words, somebody should guarantee that entrant a profit?

Mr. SIEGEL. Somebody in the trucking industry.

The CHAIRMAN. And everybody who gets in should be guaranteed a profit by somebody?

Mr. SIEGEL. Everybody that enters into the marketplace, OK, is entitled to a profit. How it is guaranteed by the shipper, how it is guaranteed by the manufacturer, how it is guaranteed by the motor carrier would have to be worked out to have some fairness arrived at.

We personally believe that a minimum floor should be set for which truckers must pull, thereby earning them the guaranteed right to a profit.

The problem here, as I see it, Mr. Chairman, is everybody is talking about competition relating to one thing: price. Well, competition is not only price, but it is quality of a service. And when the gentleman prior said well, yes, we want to bring more people in, I would rather have 10 shippers competing in the marketplace than 100—I think he was from American Greeting Card—I wonder if the competitors to American Greeting Card feel the same way about him, if he was gone that they could do better.

The problem being that nobody thinks about quality of service, and yet they talk about making sure that no matter what happens to deregulation, we keep the safety standards for the insurance.

The CHAIRMAN. I want to make sure I understand. Everybody should be able to get in within reason. As long as you have financial security and a safe truck, you ought to be able to get in, and somehow once you are in, if not the Interstate Commerce Commission, the shipper or the carrier that you contract for has got to provide you with a profit.

Mr. SIEGEL. Let me rephrase that. They should guarantee you the opportunity to make a profit.

The CHAIRMAN. What does that mean?

Mr. SIEGEL. That means that based upon my cost of doing business and your cost as a motor carrier of your office help and your use of your trailer and your cost, that you should not have to take rates less than what it costs us to operate in the marketplace.

The CHAIRMAN. If I am an independent trucker should I be allowed to quote the rate that I would like to haul something for?

Mr. SIEGEL. We do not have a choice of quoting the rates. The rates are told to us either by the motor carrier, by a broker, or by a shipper. We do not have any choice. It is either yes or no. We do not go in and say well, you only want to pay me $800, and that is 50 cents a mile; I will not pull it; you pay me $2. It does not happen, because what is told to the owner-operator—and I think Ms. Bontz can support me—is that we are told if you do not want to pull for 50 cents a mile, we will have somebody else pull it.

The CHAIRMAN. That is what I am curious about. Should that somebody else be allowed to?

Mr. SIEGEL. If somebody else should be allowed to? No. Because, you see, that is predatory rate cutting, because 50 cents a mile you cannot operate on it.

Now, the private shippers council or the private carriers council believes that they should be able to pick up freight and come back.

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When they do that, they are taking the bread out of the trucking industry, the Teamsters, the owner-operators. They are taking it out of our mouths. Their cost of transportation, loaded and empty, is built into the price of the product that they manufacture and haul.

The CHAIRMAN. Ms. Bontz, let me ask you this. You expressed concern about the ICC's implementation of the act of 1980. Specifically, what do you think the ICC has been doing to administratively deregulate the industry? You have heard other witnesses before you testify just the opposite. They think the ICC is an impediment and is doing what they can to keep further deregulation from going on.

Ms. BONTZ. Well, I do not see anything that they have done that has helped the owner-operator as far as deregulation. All I read is that the railroads are being helped. They are busy deregulating the railroads; but I see that the deregulation of the industry, as I see it from the Commission and what they are doing, is by not helping us. They do not have the staff or the resources to help us, and they are actually deregulating by not doing anything.

The CHAIRMAN. What would you like them to do?

Ms. BONTZ. I would like us to have selective, sensible regulation. And I think we need to have regulations that guarantee that people are going to have good truck service, service really. And I do not think down the road—we are talking today about how great everything is—I keep hearing that today—and I am seeing something else.

I am seeing—I have to look at it from an owner-operator's standpoint, and, of course, I am very much involved in it because we own a truck which is 10 years old and it is costing us a lot to maintain it.

I am looking at a lot of owner-operators who are trying to hang on to their chosen work hoping that the madness of this rate situation will go away. But, you know, it is not going away. Down the line, we are going to see much more diminished service. And what you are going to see are a few large trucking companies that are going to be left, and we owner-operators are going to be long gone.

I doubt 5 years from now if you held a hearing that Mr. Siegel would be representing 5,100 people, whether my husband and I would have a truck. We would be out of business. I would like something done, selective regulation to keep the trucking industry strong.

Perhaps it is presumptuous of me to sit here and talk about this when economists say this and the shippers say that and everybody is so happy, but I see a different picture out there.

I would like to see the Interstate Commerce Commission enforce the rules that are there right now that protect the owner-operator. We are not getting that kind of protection. What about that fellow that hauled that load 9 months ago and he has not been paid? And he calls me about every week or so and he says, "Rita, have you heard anything from the" ICC, and I say, "No, but I sent them another little note".

The CHAIRMAN. This is what I am curious about. Should the law guarantee that that person be paid? I mean should the ICC? Clear-

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ly the person has a right to go to court and sue, but should the ICC guarantee it?

Ms. BONTZ. We have the right to sue. I think we are protected by law.

The CHAIRMAN. You have that protection even if there was no truck regulation.

Ms. BONTZ. I believe you would. But the courts are crowded, too, you know? There is a lot of competition to get your case heard. You have to wait a long time.

The CHAIRMAN. In your estimation what would happen to not just the trucking industry but consumers and shippers in this country if you had total deregulation of the trucking industry but for reasonably agreed upon safety and financial security or insurance requirements?

Ms. BONTZ. Now we are talking about safety here, something that the Department of Transportation would guarantee, that there would be no operating authority? Is that what you are saying?

The CHAIRMAN. There would be no operating authority. Anybody could get in. You would have—in fact, it is going to be not unlike what we have in the airline industry after 1985. You would continue stringent safety requirements and you would have some kind of insurance or financial guarantee, but beyond that, anybody could get in and anybody could haul anything in any direction for any price that they chose to.

What would be the effect on the country given that kind of a situation?

Ms. BONTZ. Well, it is hard to speculate on the whole thing, but I can just imagine having a factory and having a number of people, maybe not a large factory like General Motors or something like that, but a small factory, and you are waiting for something for your production line; you have 100 people working for you. I can just imagine that you are waiting on service from one of these new trucking companies that are coming in, and the truck breaks down, the guy does not have another truck to furnish, and you are not dealing with a carrier who has a lot of reliable history of service, and your load of stuff that you need, widgets or whatever they are, 100 miles down the road or 1,000 miles down the road, and you have people waiting on your production line, and you have to lay them off. Just chaotic. It is hard for me to describe in just a few minutes how chaotic I can visualize that situation would be.

We need motor carriers in this country, and we need regulated motor carriers. And I think that we are going to have regulation. I do not know who is going to be the regulator. That is the thing that worries me. But we do need sane regulation on something so important as the trucking industry.

I do not remember what it was in 1935, but I read about it. And I know that it was a very chaotic situation then, and that, you know, we have worked hard to develop a good surface transportation industry, and then all of a sudden it just seem like we are just casting it out.

The CHAIRMAN. Let me ask you this question. You had Mr. Hitchcock here from Ralph Nader's group representing consumers, and I can assure you they appear before us frequently on a variety

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of things, and they generally think they represent consumers and consumer interests.

You have had a variety of shippers. We have relatively few complaints from small towns with whatever steps we have taken so far. There seems to be no complaint of any consequence from shippers, consumers, manufacturers. There are complaints from the American Trucking Association, from the Teamsters and the independent operators, but why no broad-based complaint from the consumers and the shippers?

Ms. BONTZ. Could it be, Senator, that the evidence—how do I want to say this? I think that we see it now, but I think the consumers—and that is what I have really been trying to say, and forgive me for not being more articulate—but I think we are going to see a devastating effect on consumers. I think we are in the eye of the hurricane right now and that the consumer cannot see it. You know, I am a consumer, and I do not see it. I see it from the perspective of how it is hitting us as an owner-operator.

And I want to leave these rates that I have brought with me today. I would like to show you how the rates are falling. I am sure you know that, and someone else is furnishing this. But I just do not believe the consumers, that we can see that at this point, but down the road we are going to see trouble for the consumers, and we are going to see a few large trucking companies, and they are going to dictate price, and consumers are going to see transportation costs going up.

The CHAIRMAN. OK. I have no more questions. Thank you very much for coming.

We are adjourned.

[Whereupon, at 1 p.m., the hearing was adjourned.]

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MOTOR CARRIER ACT OF 1980

THURSDAY, DECEMBER 15, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Sioux Falls, S. Dak.

The committee met, pursuant to notice, at 9 a.m., in the Nebraska Room, Howard Johnson Motor Lodge, Hon. Larry Pressler presiding.

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. I want to thank you very much for being here on such a cold, snowy day. Some people I have already met at breakfast came from Yankton, Aberdeen, Rapid City, and many other places, and I really appreciate that, because it shows the determination and the concern that our people have regarding some of these issues.

We are holding an official hearing today of the Senate Commerce, Science, and Transportation Committee on oversight of Motor Carrier Act of 1980. We are also looking at the Trucking Competition Act of 1983, which was introduced by Senator Packwood, which will be dealt with in 1984. One provision of that bill provides for total sunset of portions of the ICC dealing with rates and entry, which would take the ICC completely out of those areas. I know we are going to try to have amendments that will protect rural and small town areas.

But the real genesis of this hearing was an oversight hearing we had in Washington, D.C. Let me explain. An oversight hearing is one in which Congress tries to look at a piece of legislation to see how things are going. The picture painted was very rosy at that time. I raised several questions about the nature of some of the studies that had been done, and I have further questions about some of those, because I do not hear from my consumers and truckers that the act has worked as well as some of the testimony in Washington indicated.

I might digress here for just a moment to say we are happy to have some committee staffers here. On my immediate right is Kevin Schieffer of my staff, who does all of my work in transportation. We have been busy the past couple of weeks with the Chicago and North Western abandonment, with the Western Airline abandonment, and with several other transportation issues where we work with the agencies. We have had meetings with the ICC Chairman and with the CAB Chairman. In this day and age about one-third of a Senator's work is with agencies trying to represent the interests of his State in matters pending before them.

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We are also very pleased to have Steve Palmer here representing the Democratic members of the committee. Senator Ernest Hollings is the ranking Democrat on the Commerce Committee. We also have Karen Phillips here, who is representing Senator Packwood and the Republican members of the Commerce Committee. But I might say the staffs work together very closely and it is not really a partisan division at all, and that we are glad to have them here.

This is the first rural small town hearing that has been held to get input as to how the Motor Carrier Act of 1980 is working out. There has been one hearing in Washington, D.C. this year, and when you do have an official hearing of this sort you get some correspondence from here and there. I just received a telegram addressed to me here from the Maryland Independent Truckers and Drivers Association saying:

> Thank you for your hearing on the Motor Carrier Act. The adverse impact on owner-operators has been ignored by many in government. If we disappear from the surface transportation systems, many would notice and suffer. Urge your continued efforts to help us survive.

So apparently a notice of this hearing was in some national trucking magazine, and that telegram came this morning.

More importantly are the people here. I know that many of you want to make a statement who are not on the witness list. By tradition, the Commerce Committee's rules are that each witness that we hear is allotted 5 minutes to summarize their statement, and we publish their statement in full. Then there are questions. If people need more time than that, of course we will use it, but that is the committee tradition and the practice of the committee.

We have a set of lights here that are used, and one is green and one is red, and that reminds people of the time. But if you feel strongly that you are not able to express your views in 5 minutes, we will give you more time, of course.

At the end we hope to call on individuals who want to make a brief statement. Let me emphasize for anybody who has a statement, I do want to take it back in writing. We have had several independent truckers in the Aberdeen area, people who just wrote in a short statement on some of their experiences, and that is good.

Also, we are looking at the user fees issue regarding trucks. There is another piece of legislation before Congress to substitute the diesel fuel tax to raise the same amount of money. We are not going to be able to have any hope of raising any less money with the size of the Federal deficit, but that is another piece of legislation that is being considered that is related here.

I have done some checking with the ICC on rates coming into South Dakota and around the rural Midwest. The ICC has compiled pricing data for small shipments in this area comparing the 2½ years before deregulation to the 2½ years after.

Generally, prices have increased at a rate of anywhere from 41 to 64 percent faster since deregulation came into effect. This does not mean they have increased by only 64 percent, but rather 64 percent faster than before. Now, some of that increase has been absorbed by discounting in some areas.

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I will not dwell on it here. I know many witnesses will discuss this and other effects, both good and bad, as we proceed. We will move to our first panel and call them forward.

The first panel is: Mr. Jeff Parker of Parker Transfer and Storage, if you would just come up and sit down; Jerry Wheeler, executive director, South Dakota Truckers Association, from Renner, S. Dak.; Bob Appelwick from over at Madison is snowed in. We work with him frequently. A witness we just added yesterday, John Lenderts, manager of physical distribution for John Morrell and Co. in Sioux Falls.

We will start out with Jeff Parker first. Is that all right?

Mr. PARKER. If it is all right, probably Jerry Wheeler.

Senator PRESSLER. Jerry Wheeler first. Great.

STATEMENT OF JERRY WHEELER, EXECUTIVE DIRECTOR, SOUTH DAKOTA TRUCKERS ASSOCIATION

Mr. WHEELER. Thank you, Mr. Chairman.

I am Jerry Wheeler, executive director of the South Dakota Trucking Association, located in Sioux Falls, S. Dak. Our organization represents some 500 trucking and allied industry members within our State.

What I would like to do this morning is just review some of the problems that our industry has faced in light of action that was taken by Congress in Washington, D.C. I am not going to provide a lot of technical arguments, because I think the American Trucking Association has already supplied Congress with those type of arguments. I think we want to talk about what has actually happened in the State of South Dakota.

Let me start by saying that the South Dakota trucking industry has suffered through what I would call a triple whammy. We were first forced to go into what we thought would be a partially deregulated industry. The ICC has chosen to override Congress and completely moved toward total deregulation rather than what Congress intended. This has been extremely hard on our industry and has caused a lot of our trucking members to either lose money or go out of business.

The second part of that triple whammy, of course, was the 5-cent motor fuel tax increase, which we did not oppose. We supported that diesel fuel tax increase. However, we did oppose the tremendous increase in the heavy truck user tax. We felt that an increase from $140 per year for each truck to somewhere in the neighborhood of $1,600 to $1,900 over the phase-in period was a tremendous increase.

The third part of that triple whammy, of course, was the recession. So between deregulation, tax increases and the recession, the trucking industry in South Dakota has been hit extremely hard.

I guess we would first have to ask about deregulation, and who has benefited from it? I do not think you will find that the trucking industry in South Dakota has benefited. I doubt whether you will find that the small shipper, the small town retailer has benefited. I think you will find the benefits fall strictly in the area of big shippers in larger cities.

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For instance, in this city of Sioux Falls, I think you will find that the number of carriers has probably increased by 100 percent. If you go out into the rural parts of our State, you will find that either of two things has happened. The service has declined or the rates have gone up dramatically.

So as we move further toward deregulation, we are hurting rural America the worst, and we are driving another nail in the coffin of small business. Our country is rapidly moving toward benefiting big business to the detriment of small business, and I think it shows up quite evidently in our State of South Dakota.

As far as the tax increase, when we compare the heavy truck use tax to the diesel fuel tax our industry has proposed, we look at it on the basis that under the heavy truck use tax, every trucking company pays the same whether he runs a small amount of miles or has his trucks on the road day and night. We feel that is a very unfair tax situation and, therefore, we do support the diesel fuel tax.

We have no problem with that. It is a pay as you go system. It is a system where each trucker will pay according to the number of miles that he travels on the highway. I guess the perplexing part of that situation is that if Congress needs to raise a certain amount of revenue and we are willing to pay that amount, why do they care how we pay it?

If you have an industry that is willing to pay a diesel fuel tax rather than a heavy use tax, why would you go the other way? Why not let the industry pay the tax in the way it wants to pay it? Believe me, the industry seems fairly united that they do support an additional 5-cent diesel fuel tax.

I am going to conclude my statement on the deregulation issue by saying this: When President Reagan ran for office he asked, are you better off today than you were 4 years ago with Jimmy Carter? I guess we would have to ask in South Dakota, are we better off today than we were 3 years ago? If deregulation is the answer, you can ask South Dakotans what benefits have they received from banking deregulation, What benefits have they received from telephone deregulation, and what benefits have they received from airline deregulation?

Of course, the fourth question is, What benefits will they receive from further deregulation of the trucking industry? With that, I conclude my arguments. Thank you.

Senator PRESSLER. Thank you very much.

I will next call on Fred Fischer. I did not introduce Fred earlier. I have known him since he was at Washington High School, I believe, and I was at Humboldt High School, I think, at the same time.

STATEMENT OF F. FRED FISCHER, DAN DUGAN TRANSPORT, INC.

Mr. FISCHER. That is right, Senator.

Senator PRESSLER. We are growing into the middle ages gracefully together.

Mr. FISCHER. Thank you. Mr. Chairman, members of the committee staff.

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Before I get into a discussion of the philosophy of deregulation, I would like to briefly review the historical perspective of the trucking industry in this Nation. It is something I think we can all agree on.

Before the passage of the Interstate Commerce Act in the early thirties, the trucking industry in these United States was truly in a chaotic condition. We had rebates, monopolies, problems with safety, people running trucks on the road that really should not have been on the road. The Congress of the United States recognized this, passed the Interstate Commerce Act, and for the last 50 years or so we have been under a regulated system, a regulated system which developed perhaps the best trucking system of any modern nation in the world.

In 1980, of course, the act which you referred to, Senator, was passed. Since that time, in the opinion of a lot of people that are here today, our industry is in a shambles. Many common carriers have shown little or no profit in the last 2 or 3 years.

As you know, that act was interpreted by the Interstate Commerce Commission as virtually granting free entry into the trucking industry. While it has truly reinstated a competitive aspect into the trucking industry, this aspect, as I will discuss in just a moment, is no good.

We in the trucking industy feel not exactly picked on, because we see—really what we see is symptomatic attitude of callousness on the part of Government in a general attack on a lot of what I would consider institutions, truly institutions in this country.

If I could digress for just a moment, I see recently the head of the Federal Communications Commission was appointed, and he has been quoted as describing a television as nothing more than a toaster with a light bulb in it. Now, that may have made good press and might have been funny, but it is a little scary to some of us that are concerned about what goes over our air waves. One gets the impression from the quoted articles that this gentleman would just as soon see as many television stations in the United States as there are television sets. Of course, this would be truly chaotic.

AT&T has been recently dismantled, as you know. The American people have gotten used to being able to pick up their telephone and call Aunt Katie in Seattle for a modest fee, or Uncle Charlie in Texas for a modest fee, with a truly reliable telephone set, one that does not break every year, year and a half. They have come to recognize it as a basic service they can depend on.

Out here in South Dakota, as you well know, Senator, I am sure, the airline industry until a few years ago was very well reliable. While it may have cost a little bit to get somewhere, at least you could know when you were going there, when you would leave, and when you would arrive, and you knew you did that with a certain degree of safety.

The President of the United States with the passage of the Airline Deregulation Act initially pointed to lower air fares and said in effect: Gee, why did we not think of this before; look how it is benefiting the consumer. When you can fly from New York to Hawaii for $98 round trip, you and I know that is not right. The airline is not making enough money on that to renew its capital resources.

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Much the same thing is happening in the trucking industry today. In the banking business, banking has been deregulated and, speaking of toasters, they seem to be peddling as many toasters as CD's these days. If it were not so serious, it would be rather comical.

Bus lines have been deregulated, to the dismay of a lot of passengers this particular holiday season, with rescheduling, with strikes.

These are truly institutions, institutions that the American public has come to rely on, and that the American Government, it seems, is intent upon dismantling in what we see as a rather casual way. Now do not misunderstand me. I am not arguing that there are any sacred cows that should never be touched. This country is in a tough enough situation economically that everything must be scrutinized.

But with the dismantling of the trucking industry, of AT&T, the airlines, banking, buslines—it can go on and on, and I imagine it will—there seems to be a rather casual attitude about it.

As Jerry touched upon just recently, the trucking industry has been deregulated in what has been a depressed economy. The President of the United States and Congress are in part responsible for this. When they stare at huge budget deficits and yet adjourn before Christmas without doing anything about it, that to me is somewhat irresponsible.

And with the huge increase in taxes coming up in the middle of next year on the trucking industry, we have been in effect told to jump in and swim with the rest of them, and instead of being thrown a life preserver we have been thrown a rock. It is not fair to the industry, and it is not fair to the public.

I think this. That we have just begun to see the effects of deregulation, and while some people here testifying today will say, gee, my service has been as good as it has ever been, I think we should take their testimony 5 years from now. I think it will be different.

Thank you, Mr. Chairman.

Senator PRESSLER. Jeff.

STATEMENT OF JEFF PARKER, PRESIDENT, PARKER TRANSFER & STORAGE

Mr. PARKER. Thank you. Mr. Chairman and members of the committee.

My name is Jeff Parker. I am from Sioux Falls, S. Dak. I am the president of Parker Transfer & Storage. I have basically three things I would like to cover this morning: The effects of the Motor Carrier Act of 1980; the implications of Senator Packwood's Trucking Improvement Act of 1983 and the relating of the economic regulation and the ease of entry that that act promotes; and finally, I have a letter that I wish submitted into the record from Clyde Rasmussen of Black Hills Movers.

Parker Transfer was started by my grandfather in the 1920's and has had steady growth since that time. As you are well aware, we went through a period of deregulation or industry without any regulation, then the Regulatory Act of 1933. We have come full circle now and are on our way down from deregulation.

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I guess the impact, as I see it in my short 15 years with the company, I have seen us grow steadily over the years. However, since 1980, I have run a cross-comparison and a service comparison for our company using a 5-year average prior to the effective date of the 1980 act and the years since.

Our average miles traveled—again, we are a small company with less than $1 million in gross revenues—our average miles traveled on prorate vehicles prior to the act was 98,822 miles. Since the act we have traveled 132,000 miles. So we have increased our mileage by over 35 percent. Our gross line haul revenue over that same period, though, dropped from $1.60 per mile down to $1.49 per mile, a drop of 6.8 percent.

The number of families that we moved in 1 year interstate has gone from 144 on an average prior to the act down to 124, a drop of 14 percent fewer families that we are moving. Our average repair and maintenance expense on those vehicles that we are traveling additional miles, the mileage cost per vehicle has gone from 17 cents a mile up to 18.5 cents a mile. This is an increase of approximately 9 percent.

At the same time our road expense, those other expenses that we are involved with in moving, motel expenses, permits and other incidental expenses on the road, have gone from 26.5 cents per mile up to 39.6. So that is an increase of 49 percent since the act. The gas and fuel and oil have gone from 25 up to 34 percent—excuse me, 34 cents per mile.

All of these have a relative impact, because we are traveling more miles to get the same dollars and serving less people. The result is that the transportation portion of our business has suffered, and I cannot see that it is to the benefit of the shipper if I am having to curtail my operations in interstate commerce because of the increase in cost, the increase in cost in the heavy truck tax and all these items, and at the same time we are working harder, being less efficient, and raising less revenue.

The bottom line is that we have shrunk our company. Our work force has gone from a high of 18 in interstate commerce down to 10 at the present time. We have done this through attrition and not replacing people, and I see that as continuing with deregulation. As I receive more competition, I cannot continue to operate where I am making less and less money.

With regard, then, to the implications of Senator Packwood's act, it would—it purports to do two things: It would remove the economic regulation rather quickly; and, second, further reduce the entry requirements of the industry.

I have before me today our tariff prior to deregulation. This was the tariff that went into effect December 3, 1979. This is the book that all of our customers used to find out what our charges were. As you can see, it is relatively small. It has grown; it had grown then to a greater proportion than when I started, but this was the tariff.

December 5, 1983, we received a new tariff, and this is what my customers have to go by in verifying my charges. I do not even know how to interpret many of the implications of this booklet.[1]

[1] The material was retained in the committee files.

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Further economic deregulation is going to cost us, the consumers, more in trouble in just trying to identify what the rates are and what the costs are.

As a small carrier, I do not have the expertise to develop cost data to determine what it is going to cost me on a one-shot basis to move a family to Marietta, Ga. I have to rely on what the Interstate Commerce Commission now calls their collective ratemaking procedure, and they use summary data of all trucking companies to develop a rate. That gives me a benchmark, I will not have that with Packwood's act. Further deregulation of the trucking industry will simply serve to spell the demise of my size of company.

Finally, I have a letter and I will simply submit that to the record, from Black Hills Mayflower that will further substantiate the position of our particular industry. This concludes my testimony.

[The letter follows:]

BLACK HILLS MOVERS, INC.,
Rapid City, S. Dak., December 9, 1983.

MR. JERRY WHEELER,
South Dakota Trucking Association,
Sioux Falls, S. Dak.

DEAR MR. WHEELER: Over the past few years we have grown to one of the largest and most reputable Moving and Storage Companies in western South Dakota. This was accomplished by utilizing profits to continually upgrade equipment and to implement employee benefits such as group insurance, paid vacation, paid holidays et cetera, so as to attract and retain the best people possible. As a result, we have numerous shipper comments to substantiate that we gave them a first-class job and an excellent value for their money.

Since deregulation, we have experienced a steady decrease in profits, because of ever increasing competitive discounts to shippers. We have found that the competitors who got the jobs because of discounts, completed the jobs with a declining degree of professionalism and competency, and in some cases an inconvenience to the shipper because of delays, damages and missing items.

Our program of upgrading equipment has come to a standstill. We now have one less tractor-trailer. We now lease a forklift instead of owning one. We were unable to refurbish a trailer last winter and now have two trailers that need refurbishing. We have cut our staff by two people. For the third year in a row we will need to borrow operating capital this winter.

If the trend caused by deregulation continues, we will continue our efforts to diversify and perhaps one day be out of the trucking business and into a profitable business.

It is my opinion that continued deregulation will not hurt the 200 or so Van Lines in the country but will have a drastic effect on the 10,000 or 12,000 agents like myself and owner-operators, who will be forced to constantly decrease expenses by letting equipment deteriorate, discontinue employee benefits, obtain the cheapest help possible and find other areas of income out of the trucking industry.

It would appear obvious that the whole program will be a major set back to the Household Goods Moving Industry and, as with so many Government programs that are intended to save consumers money, will in the end, cost them, because of declining capabilities, efficiency, honesty, experienced people and all of the other ramifications of expense-cutting because of decreased profits that you have almost no control over.

Please feel free to use this letter or disclose any of the contents to whomever you choose.

Sincerely,

CLYDE RASMUSSEN, *President.*

Senator PRESSLER. Next I call on John Lenderts, manager of physical distribution at John Morrell & Co.

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STATEMENT OF JOHN D. LENDERTS, MANAGER, PHYSICAL DISTRIBUTION, JOHN MORRELL & CO.

Mr. LENDERTS. Good morning, Senator.

John Morrell & Co. is one of the Nation's major meatpackers. We distribute a full line of meat and meat products to our customers nationwide. Our customers include wholesalers, retailers, distributors, Government and military installations. To transport our shipments we use the services of common carriers, contract carriers and our own private carriage.

Since enactment of the Motor Carrier Act of 1980, Morrell shipments have consistently been in excess of 850 loads per week. However, we are using the services of 50 percent more carriers. With liberalized entry, there are now more for-hire carriers available to transport our goods. They are more competitive and they offer more attractive rate plans.

The increase in competition has made the carriers much more efficient and has resulted in a more favorable rate structure for John Morrell. John Morrell & Co. supports systematic deregulation of the transportation industry. This will place continued emphasis on a reasonable and fair rate structure and make the transportation more effective and more responsive to the Nation's shippers.

Thank you, sir.

Senator PRESSLER. Next I will call on Bob Appelwick, who we are happy to see has gotten through the snowstorm all the way from Madison. We are glad to see you here.

Mr. APPELWICK. I see there are some other of my contemporaries from Madison that made it also, so I do not think it was anything as great as purported to be.

Senator PRESSLER. I see, as I look around the room, I see so many people I am familiar with and I feel like I want to say hello to everybody, but I do not think that is possible.

People have driven great distances. I see people from Aberdeen, Madison, Rapid City, Freeman, Yankton and many other places. So I really appreciate it. They have come through the snow, and you have, too.

STATEMENT OF ROBERT APPELWICK, PRESIDENT, APPEL LINES

Mr. APPELWICK. I thank you, Senator, for the opportunity to visit with this panel this morning with respect to deregulation and how it is affecting our industry. I must say at the outset that my remarks have been written in formalized manner here and I will deviate and just try to summarize them.

I think one of the greatest concerns which we, from the standpoint of regulation within the motor carrier industry, have to deal with is the aspect of—the "bad aspect" of—deregulation. We have got the worst part of it still remaining for us to contend with.

We still have to publish our rates under statutory notice with the ICC, while our contemporaries in the railroad industry with their piggyback arm are now available to carry around a little black book in which they wrote down the quote for the day, whatever it may be, in order to attract the freight from the shipping public.

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We are also saddled with the regulations which the ICC seems to feel necessary in order for us to deal with our contractors, the independent operators who are used by many of the motor carriers to supplement their operating facilities. We also have numerous regulations as regards our relationship with our customers.

All of these things in the eyes of most motor carriers are very negative and are detrimental to their free operations with respect to their involvement in the transportation industry.

As far as competition and pricing is concerned, I think everyone expected there to be greater efficiency and consequently relief from the pricing elements that had existed prior to deregulation. Unfortunately, many of the moves as far as pricing is concerned went far beyond the cost levels which exist within the motor carrier industry, and as a result many carriers have had to either close their shop or seek protection of the bankruptcy laws in order to find relief from their operations.

I am confident that many others would have discontinued their operations had it not been for the very negative ERISA laws which presently exist, which would exact all of, or a substantial amount of their assets, were they to close up their operation.

We have many problems with regard to the pricing elements which exist today. With the substantial reductions which occurred, many of the companies were forced to lower the rates below their present operating cost levels, and many of the companies use owner-operators. These owner-operators receive 70, 75 percent of the revenue. They therefore experience 70 to 75 percent of the cost reductions, and in many cases this has forced them out of business. Today it is very difficult to measure how many owner-operators exist in the country, but it is quite evident that their numbers have been decimated very substantially.

There is another issue that is a concern for the motor carriers, and we have experienced problems in that area and they deal with safety. As motor carriers find that their costs are increasing and the pricing and revenues decreasing, there are elements they can manipulate in order to seek relief from these, and they are maintenance and labor costs. When maintenance begins to suffer, then you have problems with various things such as tires, springs, brake lines, brakes. Then you begin to develop additional problems in that area.

The same is true on the labor costs. You seek relief from them. In order to get yourself into a profitable mode again, and, as is the case in the airline industry and many others today, as the people in the packing industry have experienced also, the labor prices, the price of labor has been reduced. As a result we are unable to attract as competent a driver today as we had in the previous era. This has all resulted in an increase in single vehicle accidents to an unrealized level which never in the past were ever experienced before.

Operating costs as far as insurance and driver recruitment have skyrocketed. There are a number of things which this industry is concerned about and I think the Surface Transportation Assistance Act of 1982 is one of them. I think that has been alluded to here this morning.

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I think a more realistic approach has to be made with regard to that element of the matters which the motor carrier industry is going to have to deal with, and if we do not take some real, more realistic approach, we are going to find that the motor carrier industry is going to be decimated and possibly find, have to deal with the elements of strikes, either be they through unions or owner-operators.

And in those instances when those types of strikes have occurred, the economy has been put to its knees and practically any element to seek relief from the disruption of our transportation system is sought by the Government, and in those instances it is very evident that our transportation system and the motor carrier industry in this country is a vital element of our ongoing economy. And I hope that someone would take an approach that would be more realistic to what we have to deal with and allow this industry to function in a normal and profitable fashion.

Senator PRESSLER. Thank you very much.

I voted against the Motor Carrier Act of 1980 and I have been one of the opponents of this type of deregulation—I call it reregulation. I often have argued under this new system there is going to be more paperwork ultimately. The paperwork you showed certainly is a good illustration of that.

I want to ask a couple of questions about predatory pricing. Fred Fischer, first of all, have you had any problem with nationwide carriers in the area of predatory pricing?

Mr. FISCHER. Senator, even before the passage of the 1980 act, we in the bulk carrier business—specifically, I speak for Dan Dugan Transport Co. here in Sioux Falls—had a tremendous amount of competition. Intrastate rates within the State of South Dakota were far lower than intrastate rates in say North Dakota, Minnesota, Nebraska, Montana, Iowa, any of the surrounding States, which is evidence of the degree of competition that bulk carriers had, and by "bulk" I mean like petroleum carriers, any commodity you might carry in bulk.

Now, the same translates and is true really in the interstate market. While prior to 1980 I would not consider the pricing predatory, I think the term would be competitive. Subsequent to 1980, I think the term is truly predatory, in that in order to be competitive we have to price our services at lower than our costs in many instances.

We are in effect betting on the outcome. We are hoping that we can stay alive long enough to survive it so that we are the ones that are going to be in business maybe 5, 6, 7 years from now. But in the interim we are not making enough money to truly replace our capital and trucking equipment.

Senator PRESSLER. Jeff, in your business of household goods we have heard a lot about the special exemptions for the Department of Defense. Have you experienced problems like that in South Dakota?

Mr. PARKER. We certainly have, and as big as the tariff is for the household goods industry, the consumer, it is twice this size for the Department of Defense. I guess for us to do anything for them today in Ellsworth Air Force Base, that controls the traffic in South Dakota, they are as painfully aware as I am.

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I do not know what I am going to get paid for a shipment, they do not know what I am going to get paid for a shipment. We take it on faith that somehow we are going to come out, and that is not happening.

The industry is extremely predatory in that Department of Defense work, and it is going to be to the suffering of Defense personnel, because as you cut dollars for services you have to cut service when you get below the point of economy, and as a result they are going to receive extremely poor service for the dollars that they are spending.

Senator PRESSLER Do you have any estimate of the lost dollars due to this?

Mr. PARKER. I know from an industry standpoint, though, the service given to Department of Defense personnel experiences three times the amount of disruption either from a time standpoint, from a loss standpoint, or from a damage standpoint, three times as many as the nonmilitary market.

Senator PRESSLER. Jerry Wheeler, I might ask you kind of an overall philosophical question. When we had this same hearing in Washington, D.C., as you are aware, the picture presented was quite a rosy one, that the Motor Carrier Act of 1980 was resulting in all these benefits, and people were really positive on it.

What is the basic reason that what we are hearing here today is the opposite?

Mr. WHEELER. Well, I just think that what they said might still be true. It might still be true if you get into certain parts of the country, especially in the more metropolitan areas. I think their rosy picture may be true.

I do not think the same is true in rural areas. The thing that bothers me the most is I am afraid that even these shippers who come forward today and tell you they have better service or better rates, will find that once the big companies squeeze out all our little companies, things will turn around and go the other way. Competition will not be there to keep things on an even keel. So I am afraid that it is going to get worse before it gets better.

I would like to let you know that our organization and the people of South Dakota very much appreciate your position on this issue and the fact that you are willing to go forward and do battle with other Members of Congress, because I know that is a very difficult position.

Senator PRESSLER. We do have allies in upstate New York and, from this telegram, in Maryland, some of the areas outside the urban areas. But it is true that some aspects of trucking might be better off; it is just like all the other deregulation, if it is in a very populous area.

But my point has always been the common carrier responsibility; if you are going to get some very rich routes, you have to take some not so rich ones; that gives us a nationwide system of transportation.

And as Fred mentioned, all these bizarre rates everybody gets on the same routes and you get coupons and so forth, that is really not competition; it is kind of a bizarre aberration of consumers' choices. And the result is that some people—Senator Danforth of Missouri and I have even discussed some—are trying to go back to

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me of these regulatory practices. It is almost impossible to do ıat. What we have to watch very closely is the Trucking Competi- on Act of 1983, to be sure that if the ICC is not sunsetted in those reas. I think that would be just a disaster. We have to prevent ıat from happening.

I appreciate the help from all the people at the table. I might ask lob Appelwick, have you noticed any change in the ICC policy in egulating unfair predatory pricing?

Mr. APPELWICK. Well, I do not think that predatory pricing per e really exists today. I think that it is a matter somewhat with espect to overcapacity in the industry. Consequently, carriers are ttempting to gain any share of the market they can through the ıechanism of pricing, because service is an element that is very ifficult to measure.

As a result, we have seen the types of pricing that have been riven to substantially lower levels than had ever been experienced ı the recent history; and as I have tried to allude to in my open- ıg comments, that this has resulted in many owner-operators and ›mpanies going out of business, and at the same time the pool of ucking in the Nation is shrinking.

At this moment in time, I would have to say my experience in ›ntacting shippers throughout the country seems to indicate that ıey are becoming very concerned about their ability to acquire ıough trucking from the common carrier industry, from the for- ıre industry, to meet their needs in the future as the economy ex- ınds.

It is becoming very evident, particularly in some of the major arkets that we find, in Chicago for instance, that there is a sub- antial surplus of freight at the moment over that of the capacity our company to serve the shippers, and there is an awareness in ıat particular marketplace that they can expect extreme difficul- es in the future as the market expands.

The flatbed industry, those carriers who serve those types of ıippers who move large commodities such as lumber, or pipe, or eel, things of that nature, has certainly been decimated during ıe recession, and as a result that industry, the number of carriers ıd the number of units that are involved in that enterprise has ›en substantially reduced. As a result, those people are finding it ›ry difficult to find equipment in certain markets.

And as the construction industry—as the Surface Transportation ssistance Act comes into play with that, the resources that will be ›ailable to the many States and their demand or requirements for ıaterials to be moved to job sites increases, I am fairly confident ›u are going to find there is going to be a shortage of equipment ı those areas, and that prices will probably escalate rather dra- ıatically.

The railroads are also experiencing substantial increases in busi- ess in their piggyback, and their service is declining dramatically ›cause they cannot seem to handle the amount of business that ıey presently enjoy. And we use their services in certain markets, ıeir piggyback operations, and we are finding that the shipper no ›nger is very attracted to it as a result of the fact that at times it ›ngthens their time substantially due to their inability or the im- ıcting they are experiencing at their piggyback yards.

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You know, it is a very extensive and complex issue, and to try to discuss it briefly is, you know, rather difficult.

Senator PRESSLER. Yes. I might say, in your point on safety, we have passed out of the Commerce Committee, it has been reported, S. 1108, that legislation to strengthen truck safety regulations. I do want you all to take a close look at that in terms of its impact in this State.

Mr. WHEELER. I would like to respond. I think you are talking about the Danforth bill that has been reported out of committee. This bill will be of little value if you deregulate the trucking industry. Once you turn loose of entry, the DOT and ICC will not know who the carriers are, where they are, or what kind of operations they have. You will just completely lose the handle on safety.

You can pass all the safety legislation you want, but how are you going to find out where those trucking companies are, who they are, or what type of freight they are moving? When you deregulate, your safety laws become nonexistent. They are there, but they cannot be implemented.

That is part of the problem. I think even Senator Packwood has recognized that he wants to keep the safety aspect. But I guess the only points I would make is that when you turn loose of entry you have a hard time getting a handle on safety.

The South Dakota Legislature has also found that out. We followed the congressional lead and partially deregulated, and the next year we came back and changed those regulations and went back to more stringent entry requirements. That is something that I would like to have you keep in mind as they talk about safety.

Senator PRESSLER. Thank you.

Does anyone else have anything for the good of the order from this panel?

By the way, the record is open for 10 days, so you can add an additional statement. We will keep it open for 10 days unless there is some objection.

So with that, I am going to thank this panel and call the next panel. We are very proud of your presentation here this morning. It certainly for the most part is a different tune than we heard at the Washington, D.C., hearing.

The second panel is: Curt Volz, Business Insurers of Sioux Falls; Linda Bickford, who has come all the way from Rapid City, the Villa Ranchero Shopping Center at the Ellsworth Air Force Base; Bill Daniel, president of the South Dakota Livestock Association; Bob Fulker, Aberdeen Truck Terminal.

In addition let me say we had some additional witnesses who the snow has slowed down, but we do have Maynard Wittmeier of Webster, who is here from the South Dakota Farmers Union replacing Adam Seidel who could not be here. I may say that Maynard is one of the best MC's in the State. If you ever need a good MC, call on Maynard.

Glad to see you here, Maynard, and it is very conscientious of Adam to call and you to come all the way down from Webster, and we appreciate that. Curt, I am going to call on you first, if that is all right.

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STATEMENT OF CURT VOLZ, BUSINESS INSURERS OF SIOUX FALLS

Mr. VOLZ. I would like to thank you for the opportunity to discuss some of the problems that deregulation has caused transportation not only in South Dakota, but in the United States, as far as the insurance industry is concerned.

The Motor Carrier Act of 1980 brought about lower tariffs, which reduced the freight cost to the consumer, but also brought back price cutting, which has reached an ultimate that has affected the insurance costs to the transportation industry.

What has happened in our industry due to the signing of the Motor Carrier Act of 1980 is that we have seen price cutting become very vicious. The only way that a trucker today can make the same amount of money that he made 2 or 3 years ago is to push his truck harder and put on more miles. An example—a friend of mine who works for Midwest Coast in South Dakota put 90,000 miles on his rig 2 years ago, and as of last Saturday, when I had breakfast with him, he had put on 121,000 miles in order to make the same income that he did 2 years ago. He is not only putting stress on the truck, but to the driver, to maintain the same standard of living. This is happening throughout the transportation industry.

This pushing has caused serious loss problems within the insurance industry in covering transporation. We have seen transportation costs double within the last 6 months, and the future does not look any brighter. We can use an example in our own insurance agency. We write approximately $4 million of transportation business with one insurance company. Two plus years ago we were making contingencies with that company and had a average loss ratio of 58 percent regarding transportation. In the last 2 years when deregulation has really taken effect, we have seen our loss ratio go from 58 percent to 118 percent. This year as of today we stand at 148-percent loss ratio.

This cost of losses will be passed back to the transportation industry. It is not only our agency or the company referred to which in this case is Home Insurance, but the transportation insurance industry in general. You really see this with the owner-operator. Where approximately 16 months ago he was paying 3 percent of the value on his tractor, today you will see probably 5 percent, and if it keeps going it will be 7 to 7½ percent.

The loss ratios have been soaring and it is strictly due to the stress that is being put on the drivers to maintain their standard of living.

It may be true that proposals you have in front of you which were introduced November 1, 1983, may again cause some rate cutting. I can guarantee you that whatever is going to be saved in the collective bargaining of rate cutting, will be passed back to the consumer of transporation in increased insurance costs. You will again see 7 to 9 cents a mile in insurance costs, whereas of a year ago we were 3 to 4 cents.

The intent is great to lower the cost to the consumer. However, what is happening and will happen if this bill is passed is just the

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opposite. Due to the pressing on of the trucker to make a living, in some cases they are signing their own death warrant.

It is crucial we make every effort not to totally deregulate the trucking industry and its safety. I have seen what has happened to the air transportation industry, where we had over rates, low rates and now again, especially in the State of South Dakota, our air fares are as high as they were 2 and 3 years ago.

I do not believe the bill you have proposed could achieve what we are trying to accomplish, which is ultimately lower cost to the consumer and profit to the transportation. I think we will pass on higher costs to everyone.

Thank you.

[The statement follows:]

STATEMENT OF CURT VOLZ, BUSINESS INSURERS OF SIOUX FALLS

I would like to thank you for the opportunity to discuss some of the problems that deregulation has caused transportation, not only in South Dakota but in the United States. The main oversite in the Motor Carriers Act of 1980 brought around the lower tariffs which reduced the freight cost to the consumer, but it also brought back price cutting which has reached an ultimate that has affected the insurance cost to the transportation industry.

What has happened in our industry due to the signing of the Motor Carriers Act of 1980 is that we have seen price cutting become very vicious. The only way that a trucker today can make the same amount of money that he made 2 or 3 years ago is to push his truck harder and put on more miles. An example, a friend of mine who works for MTC, Inc. in South Dakota put 90,000 miles on his rig 2 years ago and as of last Saturday he had already put on 121,000 miles in order to make the same income that he did 2 years ago. He is not only putting stress on the truck but the driver to maintain the same standard of living. This is happening throughout the industry.

This pushing has caused serious loss problems within the insurance industry in covering transportation. We have seen transportation costs double within the last 6 months and the future does not look any brighter. We can use an example in our own insurance brokerage—we write $4 million of transportation business with one company. Two plus years ago we were making contingencies with that company and were averaging in the neighborhood of 58 percent loss ratio. In the last 2 years when deregulation has really taken effect, we have seen our loss ratio go from 58 percent to 118 percent last year. This year the ratio could hit as high as 148 percent. This cost of losses will be passed back to the transportation industry. It is not only our agency or the company referred to, which is Home Insurance Co., but the transportation insurance industry in general. The loss ratios have been soaring. It is strictly due to the stress that is being put on these drivers to maintain a standard of living which is due to rate cutting.

It may be true that the proposal you have in front of you which was introduced November 1, 1983, may again cause some rate cutting. I can guarantee you that whatever is going to be saved in the collective bargaining of rate cutting, will be passed back to the consumer in increased insurance costs. We will again see 7 cents to 9 cents a mile in insurance costs to the transportation industry. We were down as low as 3½ cents to 4 cents, and we now stand as of today somewhere between 6 cents and 7 cents and it will continue to go up.

The intent is great to lower the cost to the consumer. However, what is happening and what will happen if this bill is passed is just the opposite. Due to the pressing on of the trucker to make a living in some cases they are signing their own death warrant. It is crucial that we make every effort not to totally deregulate the trucking industry. I have seen what has happened in the air transportation industry where we had overrates and now in the State we are back to the same position we were 2 or 3 years ago where in some cases we are paying more for our fares.

I do not believe that the bill you have proposed would achieve what you are trying to accomplish, which is ultimate lower costs to the consumer. It will pass on higher costs in the long run and, as I stated previously, sign some death warrants.

Thank you.

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Senator PRESSLER. You are referring to the Motor Carrier Act of 1980, not the proposed Packwood bill?

Mr. VOLZ. Thiat is correct.

Senator PRESSLER. I think we can put that in the same category, all due respect to Senator Packwood. He is not here so we will not pick on him, but his representative is, and we are glad to have you here.

Bob, would you like to continue? You got down last night before the snow from Aberdeen, did you?

STATEMENT OF BOB FULKER, ABERDEEN TRUCK TERMINAL

Mr. FULKER. Yes, I did, Senator.

Thank you, Senator Pressler, for inviting me down here to address this hearing.

I am Bob Fulker and I have been in the Aberdeen Truck Terminal in one way or another since 1946. I was at one time a small truckline operator clear across the State of South Dakota from Aberdeen to Buffalo, S. Dak., and then later on down to Belle Fourche, so I know what that is all about.

We have seven small trucklines operating out of what they call the Aberdeen Truck Terminal at the present time. There used to be nine, but two of them have since had to close their doors, in the last year. They have gone to other employment.

These small trucks cover 54 small towns out of Aberdeen in a 16,000 square mile radius, and combined population of these small towns would be approximately 24,000 people. Now, this does not include the population of Aberdeen, of course. What they are is really feeder lines for the major carriers that operate into Aberdeen.

We have always had a good relationship at the terminal, with freight lines like All American or American Freight System now, Hyman, used to be G&P, now Murphy, and Lewis and all the major carriers. But since 1980 and the Deregulation Act was implemented, they have all been forced to lower their schedules, because everywhere you look there is a different truck delivering freight. You do not know where they come from, but every day you see a new one.

Some of these fellows operated trucks, I mean full-sized trucks, on a daily basis. Now they have gone to running a pickup truck 2 days a week. And if this is not hurting the service, I do not know what it is.

I always thought when you had a permit, the first thing it says on that permit is it is for the necessity and convenience of the public, not for the convenience of the owner that is running it. But he cannot serve the public if he does not have anything to haul.

I know for a fact that our shipments have gone down—I took 1 month on what we bill out. We keep track of the number of bills we have or shipments, and these are various sizes, they are not all interstate shipments, I realize that. Some of them are intrastate. We went from 1,079 bills in October of 1979 down to 946 bills in October of 1983. That is quite a drop.

And like I said before, some of the owners of these lines have had to go with other employment. I might qualify that, most of

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these fellows live in the town they serve on the furtherest end of their routes. Like the fellow from Aberdeen to Britton, he serves the towns in between and he lives in Britton. Originally he was the only carrier in there.

Now there are three other major carriers who have used deregulation to go in there because a large industry all at once sprang up in Britton—Horton Industry that makes fan clutches. It is like a big light bulb there. Let us all go to Britton. But they do not want the little freight that comes from say downtown Aberdeen for the guy who needs it for his garage, or the grocery store needs a special shipment. They want to haul something lucrative, something big.

Then we get from there into price war, and that is hurting, too. Some of these larger carriers are starting to hurt, so they are cutting their rates. But you will never see them cut the rate to a small town, unless it is one big truckload or something to that aspect, because you will never see a small minimum shipment that comes from, say, Peoria, Ill. going to Isabel, S. Dak., the cut rate on that. You will just never see it.

So I think actually what it all boils down to is the fact that the small carriers have been a feeder line for the major ones, and as the major carriers in the State of South Dakota go, so goes the small town businessman, and so will go your small carrier which is going to be nonexistent.

I thank you for your time, Senator.

Senator PRESSLER. Linda, you have come all the way from Rapid City and we appreciate that very much.

STATEMENT OF LINDA BICKFORD, VILLA RANCHERO SHOPPING CENTER, ELLSWORTH AIR FORCE BASE

Ms. BICKFORD. My name is Linda Bickford. I am here in my capacity as owner of a Jack and Jill Market. My testimony is based on ownership and recordkeeping of a retail grocer serving the consuming public.

We have been informed that deregulation was in our favor as a retail business in order to reduce the freight charges on our merchandise, the end result being lower pricing to the consumers of our State. After spot auditing our invoices from 1980 to 1983, our end result is a 10 cents per hundredweight increase in our freight charges.

On July 26, 1980, our rate was 44 cents a hundredweight. July 24, 1980, after deregulation went into effect, within 30 days we realized a price increase. And by January 3, 1983, our freight increased another 5 cents per hundredweight to 54 cents per hundredweight.

At this point I cannot say if deregulation has helped our business or hurt it. Also, many of the freight costs are included in the cost of the merchanidse, which we absorb and then pass on to our consumer.

The freight costs are 22 point—excuse me—22.7 percent higher, averaging an increase of 7.5 each year. If in fact deregulation was supposed to produce such profound savings, it has not happened in our experience as a small grocer retailer.

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Senator PRESSLER. Well, I thank you very much, because you are evidence that the situation is the opposite of what some of the Government reports have said, and so to have your testimony is very important.

By the way, one thing before we hear from Bill. Some people came here with business totally unrelated to trucking, with a case, be it social security or some other problem with the Federal Government, and came to see me. You may not want to wait the whole time. Kent Scribner of my staff is sitting over here. If you want to talk to him meanwhile, you can get some of the facts down. Sometimes people come by when they know I am in town to see me. So Kent is there if people have to leave before I am finished.

In any event, next we will hear from Bill Daniel, president, South Dakota Livestock Association, from Wentworth. Did you have any trouble with the roads?

STATEMENT OF BILL DANIEL, PRESIDENT, SOUTH DAKOTA LIVESTOCK ASSOCIATION

Mr. DANIEL. I did not make it on the road I started out on.

As already noted, I am president of the South Dakota Livestock Association and an affiliate organization of the National Cattlemen's Association, of which I am also a national director, and I speak for them in our concern for the increase in user fees that are scheduled to go into effect in 1984.

Senator Pressler, we thank you for this opportunity to express our concerns of the farmer cattle feeders of South Dakota in opposition to the proposed drastic increase in user fees scheduled to go into effect in 1984. While we commend Congress for its effort to provide adequate funding for our highway system, we are concerned with the revision of the Surface Transportation Assistance Act of 1982 which increases the special taxes on heavy trucks.

Of special concern to us in agriculture is the fact that many of us need trucks in our businesses to haul feed, livestock and truck production during certain seasonal operations. These trips are for the most part over short distances. Under the new law, we farmers are to be treated and taxed the same as the over-the-road commercial trucker who travels hundreds of times as many miles per year as does the average farm truck.

If the new law goes into effect as it now stands, many farmers will not be able to continue to operate their own trucks, and as there are not enough commercial trucks available to handle seasonal demands severe hardship will occur within agriculture.

We in agriculture are not seeking to avoid paying a share of the upkeep of our highways. Rather, we are asking that we be required to contribute only our fair share. A tax that would be more equitable and represent more fairly the amount of miles traveled in a year would be more acceptable to the entire trucking industry.

We suggested a tax such as an added tax on highway diesel fuel which would more fairly reflect actual highway use would be one way of obtaining additional funding. We cannot express strongly enough our concerns in this matter and urge that this committee do everything it can to rectify this oversight in the law.

Again, we thank you for this opportunity to present testimony.

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Senator PRESSLER. I think you make a good point in the sense that it is one that I have tried to make. I opposed those sections of that law and have sponsored legislation to change it. But the problem is, a truck that does 100,000 miles a year or 200,000 is quite different from a farmer's truck who might go 40,000 or 50,000 miles a year, but pay the same weight tax. Is that your basic point?

Mr. DANIEL. Yes.

Senator PRESSLER. I think that makes a big difference to your members and people who haul their livestock.

Mr. DANIEL. As I already stated, we are not looking for an exemption, we are just looking for equal treatment.

Senator PRESSLER. I think that is a very positive attitude, because there is no way we are going to be able to repeal the basic source of money; realistically, I could not promise that; the only other way is to add it onto this huge deficit, which I would not be in favor of. I think it would be more equitable to collect the same amount of money in a different form from the same people. I appreciate your statement.

Curt Volz, your 48 percent loss ratio in insurance costs. You have shown insurance costs have increased dramatically since deregulation. Are there any estimates of the number of injuries or deaths due to deregulation in the safety area?

Mr. VOLZ. Well, I can only speak from our own agency's standpoint. The pushing, I guess, of the drivers to maintain that standard—let us face it, everybody has a standard of living they have to maintain.

The pushing of the safety, as far as fatalities, the number of fatalities have not necessarily gone up. But the number of injuries—I can use one of my customers as an example. There were 332 work comp claims, where 3 years ago there were about 117. So we have seen almost a 300-percent increase, and this I think goes hand in hand from the large to the small.

The more regulations that we take away and the more they push, the less safety we have, the more accidents that you are going to have, the more dollars the insurance company pays out, the higher the insurance costs are going to be.

It is very evident that a single owner-operator is going to feel it first because, of course, he has less money to spend for insurance to start with, and where he was paying $2,000 to $3,000 for a total package of insurance, he may now pay $9,000, $10,000. This operator is going to get hurt first and they are being forced out. You know, the owner-operators per se are weeding themselves out because of the high costs.

Senator PRESSLER. Bob, your examples of the concept of the dog in the manger thing that is talked about, could you describe any of those practices in further detail?

Mr. FULKER. Yes, Senator. That I would say is one of the main things that has been a thorn in the side of the small motor carrier. By the small motor carrier, again, I am talking about the owner that lives in the small town.

When these larger carriers through deregulation or whatever acquire rights for these smaller towns, the only time they see fit to use them is when they have a load that fits their price range or that they can afford to go in there. And I do believe that along that

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ine the ICC should have come up with a rule that if a carrier did ıot use a point for so many given days, months, whatever, it would ıave to be worked out, they should be made to abandon that au-:hority and to give it up and not be able to come back and use it.

In the example I am using of Britton, S. Dak., where there was ın authority that a certain truck line picked up that had laid dor-mant for years there was not anyone who knew it was even there. But the minute an industry showed up in this small town, they de-:ided to use it.

That is what is happening now through deregulation. The larger :ompanies—and you cannot blame them; they are in business to make money—they go out and get rights for the whole blanket au-thority for the whole State, and yet they are not using this authori-ty in every one of these small towns unless it comes so that it is for their benefit.

In the meantime, the small carrier does not get enough freight. He has to have all the business that is there or he is not going to survive, because due to our depressed economy in South Dakota now there is not that much business to go around when you start dividing it up.

So I say if they are going to get authority in the town, they should be made to use it regularly, because that is what they got the authority for in the first place. They took this on as a necessity and convenience of the public and they should be made to use it or else lose it.

Senator PRESSLER. Linda, I think it is especially good to have you here, because ultimately what we are talking about is prices to consumers. And it is true that most people in this room probably have an interest in trucking, but what we are interested in really is the public interest, how much products cost. And to our amazement, sometimes products are more expensive in a small town store than they are in a metropolitan area, and that is usually because of transportation, I believe.

Now, in your store you probably have no choice but to pass on such trucking costs to consumers, as do many others; is that basically correct?

Ms. BICKFORD. Yes, it is.

Senator PRESSLER. Therefore, really your customers who are not in this room and probably never heard of the Motor Carrier Act of 1980, are affected. I think that is what we are really talking about here?

Ms. BICKFORD. Yes.

Senator PRESSLER. There have been some of these surveys—we are going to talk about them later—that have been done in a superficial way, that have called businesses and not found a specific complaint. But we have some counterexamples. I think your testimony is very valuable and we will place your statement in the record and we thank you.

Ms. BICKFORD. Thank you.

Senator PRESSLER. I thank this panel very much. Again, there are some possible additional questions from the minority and the majority which we may submit in writing.

The next panel should come forward. It is: Ed Rastatter, the Chief, Regulatory Policy Division, Office of Industry Policy, U.S.

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Department of Transportation; Ms. Beryl Gordon, Office of Legislative Counsel, Interstate Commerce Commission, Washington, D.C., accompanied by William Southard, Director of Transportation Analysis; Mr. Dean Randall, president, South Dakota Retailers Association; Mr. Roger Wigen, transportation manager, regulation and legislation, Minnesota Mining & Manufacturing, St. Paul, Minn.

We understand Mr. Wigen is having some trouble getting out of Minneapolis this morning. We will call on Mr. Rastatter first, the Chief of the Regulatory Policy Division. We thank you very much for being here and we look forward to your statement.

STATEMENT OF EDWARD H. RASTATTER, CHIEF, REGULATORY POLICY DIVISION, OFFICE OF INDUSTRY POLICY, DEPARTMENT OF TRANSPORTATION

Mr. RASTATTER. Mr. Chairman, I appreciate the opportunity to represent the Department here today to discuss the administration's view on economic regulation of motor carriers of property.

The Motor Carrier Act of 1980 has now been in effect for almost 3½ years. During much of that period the trucking industry, like most industries, has been burdened by weak demand for its services. Substantial decreases in truck tonnage levels have resulted in decreased profits and increased numbers of business failures both in local and interstate trucking.

However, throughout these difficult times the industry as a whole has continued to provide good service to shippers and receivers throughout the Nation. Perhaps the most remarkable news we have to tell today is that there is no new story; the trucking industry as a whole continues to move the freight wherever it is needed.

In many respects, the first volume of the motor carrier regulatory reform story is nearly complete. With the exception of removal of antitrust immunity for single line ratemaking, most of the basic reforms contemplated by the MCA have been implemented. We agree with the conclusions of the Motor Carrier Ratemaking Study Commission's fine report which recommended the removal of all antitrust immunity for motor carrier collective ratemaking.

In the meantime, carriers have been adjusting to a more competitive way of life. Some among them have voluntarily sought out ways to improve operating efficiency and respond better to shipper needs. Many of these carriers will prosper. Others have resisted change, and for them the period of adjustment may prove more difficult.

Shippers too have been confronted with a new transportation environment. No longer does the shipper play a substantially passive role in the overall distribution process. Many opportunities exist to shop for various price and service options, to negotiate service packages, to consolidate shipments and otherwise seek more efficient distribution strategies and to work closely with carriers to design transportation services that best meet the shippers' overall needs. For shippers, as for carriers, transportation planning now entails substantially more than thumbing through a well-worn rate book.

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The evidence we have seen during the past 3 years shows that shippers are happy with the results of motor carrier reform. The most recent results of a DOT-sponsored multiyear survey of truck service to small communities are essentially the same as those of previous years.

Rural and isolated shippers continue to receive good service, with more shippers noting service improvements than deteriorations. While some shippers receive less frequent service, almost all shippers note that more carriers are competing for their business than before the MCA.

Moreover, in Florida, which totally deregulated its intrastate trucking industry in 1980, shippers seem to be similarly satisfied with the trucking service they are receiving. A DOT-sponsored study of Florida truck deregulation found that both in 1981 and 1982, the vast majority of Florida shippers surveyed approved of deregulation.

Most respondents in both years noted no change in overall service levels. Of those who did report changes in service levels, three times as many reported improvements rather than deterioration. A majority of respondents in both years perceived that deregulation had resulted in truck rates that were lower than they would have been under regulation.

While the State of South Dakota has not been included in our formal studies on truck service to small communities, we have every reason to believe that shippers in South Dakota are enjoying the same results as shippers in similarly rural areas of such States as Nevada, Oregon, and Maine. We did call a number of shippers and knowledgeable individuals in the State, and the consensus was there are no problems with truck service. Several shippers were quite enthused with the change since the MCA.

As the members of this committee are well aware, the short-run picture is not uniformly rosy. Sharply lower motor carrier tonnage has contributed to reduced profits for most, losses for many, and bankruptcy for some. According to the most recently available data from Dun & Bradstreet, the absolute numbers of business failures for both local and intercity trucking continues to rise sharply through the first half of 1982. These two series have moved in very similar fashion since 1971.

Both local trucking, which was not substantially impacted by the Motor Carrier Act, and intercity trucking, which of course was, exhibited much higher levels of business failures as the economy weakened. We believe this is strong evidence that the recession has been the primary cause of these failures.

In summary, while overall demand for motor carrier services has continued to be week, shippers are still receiving good service. The long-term decline in tonnage appears to have bottomed out and the beginning of recovery seems to be at hand. For the many carriers that have pursued cost reduction and efficiency enhancing strategies during the recent hard times, better times ahead will mean robust profits and the means to invest in the future.

With respect to the future, we see two especially promising long-term trends: improving motor carrier efficiency through greater knowledge by carriers of their internal operating characteristics;

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and new ways of facilitating information flows among carriers and shippers.

With respect to the first trend, the industry's development of personal computer software for costing individual motor carrier shipments should help put necessary costs and pricing data within the reach of even small carriers.

With respect to the second trend, both computers and people are helping to meet the information needs of the trucking industry. In particular, we have observed the recent rapid growth of property brokers who facilitate informational and traffic flows by matching up carriers and shippers. Brokers have long played an important role in the transportation of exempt commodities. In the past 3 years, they have begun to be an important factor in arranging the transportation of regulated commodities as well.

The growth of property brokerage is important to the trucking industry as a whole, but particularly so for the future of less than truckload, LTL, transportation. Many of the activities engaged by brokers—such as consolidating LTL shipments into full truckloads, arranging for truckload loads to be topped off with LTL shipments, providing marketing services for smaller carriers, and making information about a wide variety of motor carriers easily available to shippers, including rural shippers—help encourage the maximum possible level of competition in the movement of LTL freight.

These brokerage activities help assure that shippers of LTL freight will have as many alternatives as possible, a function also fulfilled by LTL carriers, freight forwarders, and shippers associations.

In addition, attitudes as well as institutions will help shape the future of the trucking industry. In the 3 years since enactment of the MCA, we have seen a gradual trend toward acceptance of reform on the part of industry executives. While certain segments of the industry—such as contract and private carriers—have been sympathetic to reform all along, we are beginning to see a broadening of this acceptance.

A recent survey done by the Consulting Center in Marlboro, Mass., found that 40 percent of the trucking executives surveyed no longer felt that antitrust immunity was necessary. In addition, the 1982 survey of Florida motor carriers undertaken for DOT showed that 47 percent of the respondents either preferred deregulation of their interstate trucking industry or did not care one way or the other.

Finally, we have seen no valid statistical evidence linking deregulation with the safety performance of the trucking industry. Nevertheless, Secretary Dole has made it clear that highway safety is one of her highest transportation priorities and that motor carrier safety regulation will be given a greater degree of attention than was received in the past.

In this regard, the Department is moving rapidly to implement the recently enacted 5-year program of grants to the States for increased enforcement of truck and bus safety. Under this program, endorsed by the administration, the States could begin as early as January receiving substantial sums to improve safety enforcement through 1988.

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In summary, as the Department also testified last year, we believe that motor carrier reform is working well. Through difficult times, the industry has responded to economic regulatory reform in ways intended by the Congress: By the creation of new carriers and the expansion of existing carriers into new markets; by the provision of a wide variety of new price and service options to shippers; and by continuing search for more efficient operating techniques, all leading to lower rates for shippers and savings to consumers.

As tonnage levels begin to improve, we believe that those carriers who have best adapted to the new, more competitive environment will begin to reap the economic rewards of their actions.

That concludes my prepared remarks, Mr. Chairman. I will now be glad to answer any questions you may have.

Senator PRESSLER. All right, we shall have some questions for you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. You stated in your testimony that Department of Transportation research shows that rural and isolated shippers continue to receive good trucking service. Please describe this research in greater detail.

Answer. A multi-year survey of service to small communities performed by Syracuse University under Department of Transportation (DOT) sponsorship has consistently shown that shippers in rural and isolated communites continue to receive good motor carrier service since passage of the Motor Carrier Act of 1980 (MCA). This study found that, both in 1981 and 1982, shippers and receivers in small communites commonly reported no change in the level of regulated motor carrier service they received.

In 1981, reported changes in service levels typically showed improvements both in the level of competition and in the number of carriers offering service. In 1982, roughly equal numbers of small community shipper/receivers reported increases or decreases in service levels. The most common response by far, however, was still no noticeable change in regulated motor carrier service levels. Moreover, "inaccessibility" (defined as being more than 25 miles from an interstate highway) was not a significant determinant of shipper/receiver service levels. A copy of the second follow-up survey, providing detailed results for 1982, is attached.[1] We will also send you a copy of the third, and final, survey results when they are published in late Summer or Fall of 1984.

Moreover, the results of the Syracuse surveys mirror the general results found by other post-MCA studies of service to small communities. Even in Florida, which removed all economic regulation of intrastate trucking in 1980, shippers and receivers in small and rural communities continue to receive good trucking service.

Question 2. The financial performance of the regulated trucking industry was very poor in 1982. Preliminary data for 1983 show that the financial picture for large carriers improved in 1983, however. Do you see any signs that the financial condition of small trucking companies is likewise improving?

Answer. There is yet very little evidence concerning the 1983 financial condition of small motor carriers, particularly since these carriers are not required to file annual reports with the Interstate Commerce Commission (ICC). When completed, the study of Class III motor carriers sponsored by DOT should provide a substantial amount of data concerning the financial condition of such carriers since 1978. We will send you a copy of this study as soon as it is completed.

In addition, preliminary results from a study of minority motor carriers sponsored by DOT provides recent evidence that the financial condition of small regulated trucking companies may be better than was commonly feared. Most of the eight minority carriers interviewed ranged in size from about $200,000 to $2 million in annual revenues, and all but two were optimistic about their futures. Four of the eight carriers reported that, as of Fall 1983, their revenues and profits had increased since 1980. Two reported that profits were unchanged; one carrier reported

[1] The study referred to has been retained in the committee files.

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mixed profit results with a trend toward improvement in 1983; and only one carrier reported a systematic decrease in profits since 1980. We will provide you with a copy of this study as soon as it is completed.

Four of the eight minority carriers received their first ICC operating authority subsequent to passage of the MCA in 1980. Prior to this time, many minority trucking firms found it difficult to gain access to the interstate trucking industry, because of the ICC's earlier restrictive entry policies.

Senator PRESSLER. Let me say that we will first hear from Beryl Gordon, Office of Legislative Counsel, Interstate Commerce Commission.

We very much appreciate your being here.

STATEMENT OF BERYL GORDON, OFFICE OF LEGISLATIVE COUNSEL, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY WILLIAM SOUTHARD, DIRECTOR, OFFICE OF TRANSPORTATION ANALYSIS

Ms. GORDON. Good morning, Chairman Pressler. Chairman Taylor had a prior commitment and asked me to deliver his testimony on the implementation and effects of the Motor Carrier Act of 1980.

Director Southard and I appreciate the opportunity to appear here today to present the views of the Commission. Since the Chairman has testified so recently before the Senate Commerce Committee at the third annual motor carrier oversight hearing held in Washington on September 21, 1983, I am submitting a copy of that testimony for the record, which I will summarize for you with some updated figures.[1]

At prior motor carrier oversight hearings, the Commission has testified that the motor carrier industry and the users of its service have responded favorably to the changes mandated by the Motor Carrier Act of 1980. I would like to reaffirm that view today.

Despite the serious financial difficulties that some motor carriers were experiencing last year, we reported at the December 14, 1982, oversight hearing and just recently at the September 21, 1983, hearing that the significant reforms of the Motor Carrier Act; namely, eased entry, rate flexibility, and reduced antitrust immunity, were being achieved. Clearly, the environment in the trucking industry had already become more competitive last year. With regard to the industry's declining financial performance, the Commission noted last December that economic conditions, rather than regulatory reform, appeared to be the principal cause.

I am pleased to report that the latest figures indicate the motor carriers' financial picture has improved. As we predicted, the carriers' earnings are improving along with the general recovery in the economy.

At this point I would like to highlight some of the indicators that have led the Commission to conclude, for the third year, that the Motor Carrier Act reforms are indeed working.

Since the effective date of the act on July 1, 1980, 20,073 new carriers have received authority from the Commission. Over 64,206 new certificates have been served during the same period. As ex-

[1] See p. 25.

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pected, applications appear to have leveled off and are presently being filed at a rate of approximately 1,100 each month.

Overall, shipper satisfaction with the level of service remains high. Complaints continue at low levels. For fiscal year 1983, complaint levels concerning motor carriers of property range from a high of 1,020 in March to a low of 631 in September. In fiscal year 1983, the total number of complaints against motor carriers of property declined more than 5,000, compared to the number received in fiscal year 1982. And both years are substantially below pre-Motor Carrier Act levels.

Even more significant, however, in measuring the success of the act, is the status of service to small communities, since this was the area that most people were concerned would suffer form regulatory reform.

Last December, and again this past September, we reported to this committee that motor carrier service had not been curtailed and that, if anything, such service had improved. This conclusion was based on a report mandated by section 28 of the Motor Carrier Act, entitled the "Small Community Service Study," released September 1, 1982.

We summarized this comprehensive study at the December 1982, oversight hearing and made a copy of the report available to you at that time. I will summarize the results briefly for you now. Of the shippers surveyed in the Commission's nationwide small community survey, 9 to 20 percent said more service was available now than before the act, 77 to 90 percent said the availability of for-hire truck service was unchanged, and only 2 to 5 percent said less service was available now. With respect to freight claims, 85 to 97 percent of those shippers surveyed indicated either that they had no claims or that there had been no change in their ability to resolve the claims; 3 to 8 percent indicated more problems, and 1 to 9 percent indicated fewer problems with respect to claims. We have no reason to believe that these results have changed. In fact, a recent study conducted by DOT supports our conclusions.

Turning to the industry's financial performance, as I mentioned earlier, there has been an improvement in the financial condition of freight carriers which parallels the turnaround in the economy. This is indicating by the latest earnings data for the 100 largest common carrier trucking companies. The figures have just been compiled for the third quarter of 1983 and should be released by the Commission early next week.

A comparison of the third quarter operations for the same period in 1982 showed that: Operating revenues rose 7.9 percent to nearly $4.3 billion; net carrier operating income increased substantially by 95.1 percent to $214.1 million; net income more than doubled, rising 131.4 percent to $111.9 million; revenue tons hauled increased 4.2 percent, reflecting the recovery in the Nation's economy (this is the first year to year quarterly improvement in traffic volume since the third quarter of 1981); of hese 100 carriers, 71 reported increases in operating revenues, 72 reported improved net carrier operating income, 63 reported improved net income, and 67 reported increases in tonnage hauled.

A comparison of the results for the 12-month period reveals that: Operating revenues increased 2.8 percent to $15.9 billion, even

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though revenue tons declined 2.5 percent; net carrier operating income rose 121.5 percent to $528.3 million and net income increased 119 percent to $278.4 million; the operating ratio—ratio of operating expenses to operating revenues—decreased, which means it has improved, to 96.7 percent from 98.5 percent; and rate of return on shareholders' equity substantially increased to 9.59 percent from 4.28 percent.

With regard to rates, there has been greater pricing innovation and a dramatic increase in independent ratemaking since passage of the Motor Carrier Act. The number of independent actions is up, as is the number of motor carrier filings. In fiscal year 1982, 180,829 independent rate actions were reported by major rate bureaus. The figure for fiscal year 1983 is 230,184. Motor carrier filings for this fiscal year increased to 1,061,847 compared to 725,864 in fiscal year 1982. The vast majority of the filings are rate reductions. Thus, it appears the act has had its intended effect of increasing competition and providing ratemaking flexibility.

This concludes the prepared testimony. Now I would be happy to respond to any questions you may have.

Senator PRESSLER. Well, we have heard quite the opposite here. We have quite a contrast. I think this illustrates that in the Commerce, Science, and Transportation Committee, on which I serve, we have a lot of controversy. I also serve on the Committee for the Aging and the Small Business Committee and the Foreign Relations Committee.

But about 90 percent of our work is things that are not in the newspapers. That is, we hold hearings and work on legislation that are of great importance to the American people. I was explaining this to a group of high school seniors the other day, the fact that sometimes the only people in the room are the people who are directly in that industry, but what happens there affects consumers a great deal.

And I think this contrast that we have seen here is something we should dig into a bit, and I have had a number of questions that I have raised in Washington and I will raise them here, and you can respond to them, because I very much appreciate your coming here and giving this testimony. I think it is very valuable to members of our State to hear this point of view. I think that part of what we are putting into the record will challenge that for the permanent record.

But in any event, first of all, as I understand it, the survey that was done originated from a Dun & Bradstreet shippers list. Now, I am not sure if that is true or not. Is that roughly true?

Mr. SOUTHARD. This is the small community study you are referring to, Senator?

Senator PRESSLER. Yes.

Mr. SOUTHARD. The source of communities and shippers in those communities came from Dun & Bradstreet, but it is not necessarily a shippers list. Just the Dun & Bradstreet—if you can let me just find it here, I can give you the exact name of it, from the Dun & Bradstreet Marketing Service.

It is a list of everyone they have on that service. I think that it is the list, without any credit information, of all the people Dun &

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Bradstreet has done a credit workup on. It is not particularly necessarily the shippers, but from Dun & Bradstreet, yes.

Senator PRESSLER. I am going to ask that we do a followup study, at least in this State, of course. South Dakota was not one of the States left out of the ICC study?

Mr. SOUTHARD. No, it was.

Senator PRESSLER. Which study ws it not in?

Mr. SOUTHARD. The DOT study, I believe Mr. Rastatter just testified. We structured our study so that only small communities—and we define "communities" as communities from 100 population to no more than 15,000 population—were surveyed.

We broke that into three separate groups, 100 to 5,000, 5,000 to 10,000, I believe it was, and then 10,000 to 15,000. We structured our study so that communities in those size brackets from each of the 38 contiguous States was in it. We did not look at Hawaii and Alaska.

Senator PRESSLER. You were very courteous to let us look at your original data. We contacted a number of those firms who filled out the ICC study questionnaire in this State, and I thought you might be interested in what they had to say. I thought maybe Kevin Schieffer could summarize. He did the leg work on calling some of them. This illustrates the need to do a more thorough study and to look at this more thoroughly.

Kevin, would you give some of the results when you did some calling?

Mr. SCHIEFFER. Yes. A little background maybe on the study itself might help. The now famous ICC Small Community Study showed a very favorable impact of deregulation on the small communities, and Senator Pressler, at the Washington hearings, made the point that he had heard a lot of different things from these small communities when he went back to South Dakota.

He heard a much different story from the communities themselves than what was in the study, and as a result of these conflicting reports he asked the ICC if we could check their original data.

We called 10 of the respondents to the questionnaires you supplied us. We took just the first 10 questionnaires off the packet. I do not know how scientific that is, but none of them were selected for any particular reason. I just took the top 10 off of the packet and called them, just to get an update since the last time they filled out the study. I believe a year, 2 years ago?

Mr. SOUTHARD. Yes, the last go-around was about 2 years ago.

Mr. SCHIEFFER. There were a number of surprising things that came out of that. The first person we called was a banker who remembered the questionnaire only because he was surprised that the ICC was questioning him on shipping costs and service. He said they just did not use any trucks, and he recalls that he did not finish filling out the questionnaire and he could not remember the last time they shipped anything by truck.

Again, that is something you cannot tell from Washington, but just pointing out that maybe the source of these things was not so accurate in pinpointing the small communities and the actual shippers.

Another respondent said that deregulation did not really affect his business because they hauled everything by private truck

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anyway, and they "were not really affected one way or the other," he said, "but freight rates for the small guys who do not have their own trucks have gone out of sight." That is a quote.

Another said he did not recall filling out any forms and added that he seldom used trucks for hire. He was in the ready mix business and they did not do a lot of over-the-road shipping.

Finally, we did find someone who was a shipper. He did not recall filling out any forms. Again, this was 2 years ago. I do not mean to imply that he did not, but he said he had not remembered. He did say he had noticed that service was not any poorer, only that shipping costs had gone up.

Those are just some of the general comments. Out of the first 10, only one of them was someone who actually used shipping services that were regulated.

Mr. SOUTHARD. OK. Senator, you want me to respond now?

Senator PRESSLER. I am going to press for another study or going back to the field, because I find such a big gap in what our truckers say, and that is part of your purpose in being here. We appreciate your being here. I am frankly not satisfied with the study, although I know you worked very hard on it. But you may respond to that.

Mr. SOUTHARD. My first response would be that the first couple of questions—and I have the questionnaire and a copy of the study here which I will submit here for the record. And I would just like to add, if anyone here wants a copy of the study I will send it to them. I brought only one with me, but we have some left.

The first couple of questions in the questionnaire asked: Do you or do you not use for-hire trucking? And we were interested in that, of course, and we got a number of folks that did not use for-hire trucking. And as I recall, they were taken out of the calculations, in respect to regulated service. I will have to check on exactly how that was done, but I believe they were.

But one of the problems with our list of businesses, we did not know very much about the type of business and what they did. It had a name, address and a phone number in the small communities.

I have virtually no doubt that in many instances the results might be different 2 years after, 2 years down the road. I am afraid I cannot promise you, Senator, that I can do another study. It is rather a costly undertaking and my boss has something to say about me spending Commission money. But I can say I would personally like to update it.

Senator PRESSLER. Obviously, you are not in a position to agree to that here, but I am going to be talking to various people to get an update, and my staff would be willing to work on this. Indeed, if the people in this room wished to submit questions to me to ask this panel in writing during the next 10 days, I certainly will, because I know some of you have questions.

But also, I think we do need to take a look at the grassroots in rural and small town America—and I am not up for a costly study here—because I think we have gotten some evidence collected here. We intend in our office to submit this to you. We have already more evidence and statements from small town people.

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The Commerce Committee believed from the result of your study that things are OK and going well. That is not what I hear when I am out in my listening meetings. And that is one of the things about a Senator: I spend a lot of time holding listening meetings.

There is something wrong here. There is something wrong with either what I am hearing or your study, and we have to sit down and really go through the raw data, and we have to really get to the bottom of this difference, and also the facts and the evidence that has been brought out here.

I think it is probably true that things are better if you have big loads in big cities. I have talked to Senator D'Amato of New York about this the other day, because he is hearing things in upstate New York and he is hearing things in his smaller area. And believe it or not, every State has rural areas, although most of his is in New York City. Indeed, we heard here today from Morrells that they have found a better situation, as I understood their statement.

So there are two sides to this thing. But I want our side to be heard, and I am personally convinced that it is not being heard. Of course, I appreciate you people being willing to come here. I hope that afterwards you will talk to some of our people in the room further, because I am convinced that that study does not reflect what is going on in small town rural America. I may be proved wrong, but not based on what I am hearing in my State.

Let me add that we did check with some of the people in the State—I guess one person who is now retired from the ICC—who had nothing to do with this study. But I think we are going to have to have more of a hands-on approach. Sometimes these questionnaires that are mailed out from Washington to small businessmen, some of them do not get answered, some do, some are taken in a different way. I know you have limited funds and you cannot decide to do another study, but that is part of the purpose of our hearing today in my view.

Mr. SOUTHARD. Senator, if I might add one comment here. I think you mentioned the ICC employee in South Dakota who has recently retired. I would like to announce that he has been replaced. We have an employee, a district supervisor in the field staff office in Pierre, and his name is Michael Nighbert. Let me, if I could, just read Michael's phone number. He is the Commission's eyes and ears in South Dakota, and I encourage all South Dakota residents with any kind of problems or praise for the trucking industry to contact Michael.

And I think I have got his address and phone number. It is room 322 of the Federal building in Pierre, area code 605, 224-2812. Michael Nighbert holds down a one-person office, but he has, I am told, a very fine code-a-phone that you can leave messages on and he will be back in touch.

Senator PRESSLER. Were you in contact with the previous ICC person while you were doing your study?

Mr. SOUTHARD. I do not recall, Senator. What we did as a matter of completing the study, we mailed the questionnaires. There were three mailings over different time periods. We mailed the questionnaires, and at the same time sent a list of all the people we had mailed questionnaires to to our regional offices.

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For this region, the regional office is in Chicago. The regional director assigned members of his staff, which may well have been the individual in Pierre for South Dakota—I just really do not know—to contact the people we mailed the questionnaires to, to see, one, if they had gotten the questionnaire, and to ask if they have any problems with it, and to encourage them to fill it out.

We waited a bit longer, I think slightly over a week, and if we had not gotten a response from the individuals the field staff, our field staff, recontacted the people we had mailed the questionnaires to and asked them again about the questionnaire. And if they wanted some help in filling the thing out, our field staff worked with them on the phone.

All of the contact between people who received our questionnaires and the ICC was between the ICC field staff and them.

Senator PRESSLER. Kevin has a couple more points to make on that study.

Mr. SCHIEFFER. I am just going to pick up on that point about the field offices or regional offices picking up on the studies when there was no response. How did that work again?

Mr. SOUTHARD. The first contact by our field staff, and that would be either from the regional headquarters——

Mr. SCHIEFFER. For South Dakota that is where?

Mr. SOUTHARD. Chicago, or the regional director may have assigned that to the person in the State office.

The first contact was made, I think, about a week after the questionnaire was mailed, and that was basically to determine if the people got the questionnaire. If they had received it, our field staff encouraged them to complete it and return it. If they had not received it, the field staff had a supply of questionnaires. They mailed them another one right then.

The next contact was within about 10 days, I believe. We waited that long and if we had not received any response, then the field staff recontacted them and said: "Hey, are you having trouble or have you lost it or what?" And at that point, if the person receiving the questionnaire did not understand a question, for example, the field staff, they had been trained in the meaning of the questions, and they hopefully clarified the question. I would also hope the field staff did not suggest any answers.

Mr. SCHIEFFER. That was one of the points that was coming up. One thing we did check, it must have come from the regional office because the South Dakota office was not involved in it, and maybe that would have eliminated some of these responses coming from someone who really was not involved in the industry. I do not know.

I am not trained in scientific surveys of any kind, but it seems to me the followup—I believe we talked about this once before—you mentioned the return rate was something like 97 percent?

Mr. SOUTHARD. No. In some cases it was, but the overall response rate was very high, in the 70-percent range, low to middle 70 percent; very, very high, though.

Mr. SCHIEFFER. What is the norm?

Mr. SOUTHARD. In a mail questionnaire, in the neighborhood of 20 percent.

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We worked very hard to get a high response rate. Unless you have a high response rate, I am reluctant to generalize. We worked very hard to get a high response rate.

Mr. SCHIEFFER. It is hard to tell, and you pointed it out before that possibly the followup to this thing, the work by the field office may or may not have encouraged those that really are not involved to go ahead and fill the thing out and get it over with.

Mr. SOUTHARD. I suppose that is possible. It could happen. It should not happen.

Senator PRESSLER. I think we have established the point. I know Senator Exon, of Nebraska, is interested in this and Senator Hollings also. We are going to organize a meeting and try to see if we can review this. In my opinion, this was not a scientific study because of the way the lists were chosen and the general nature of it. But that is my opinion.

I would like to ask Ed if he has a view. Now, you heard the local trucking firms here this morning. Why is there so much of a difference in what they are saying and what you are saying?

Mr. RASTATTER. First, Senator, I do not think what we are hearing today is that much different from what was heard in Washington. In Washington we heard from the trucking industry that they did not like it, and that is what we have heard here.

In Washington we heard from the big shippers, the National Association of Manufacturers and the American Retail Federation and what have you, that they liked it a lot. They are getting a lot of discounts, and they are getting better service.

Although we heard from associations of small shippers in Washington, that they liked it, we did not hear from any individual small shippers. Small shippers as a rule cannot really afford to fly to Washington and give testimony. So perhaps this is the first time we are hearing testimony from individual small shippers, and we appreciate being able to hear that.

Second, I would like to say a little bit about our small community studies. We have done studies of two different kinds. We have done some that are statistically valid, like the one the ICC just talked about, in the six States of North Carolina, South Carolina, Georgia, Pennsylvania, New York, and Maine, and they are completely consistent with the results that the ICC has produced.

By and large, most people do not notice that there has been any change. Most people, as a matter of fact, do not know that trucking is regulated or that there is anyone they can complain to, either at the Federal or State level. You just do not hear complaints; people do not know there is anyone to complain to.

Also, our study is consistent about what you are saying about your followup on some of the South Dakota shippers, that a lot of them do not use trucking. As a matter of fact, our studies have found that only about 15 to 20 percent of the shipping in and out of small communities is done with regulated common carriers other than UPS. The bulk of the transporation in and out of small communities is private carrier, UPS, bus package express, and a guy getting in his station wagon driving to Salt Lake City, for example, to pick up whatever he has to get.

Now, that is in general what we found with our statistically structured studies. We have also sent some of our best staff, our

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best economists, out to small communities in selected States, such as Nevada, New Mexico, Oregon, Kansas, Kentucky, Minnesota, Pennsylvania, and Alabama, and they have gone to designated towns, towns designated by others usually, I might add. Senator Cannon picked two or three towns in Nevada, Senator Schmitt picked two or three towns in New Mexico, and Senator Ford picked two towns in Kentucky, and we sent our staff members there.

They did intense case study interviews with everyone they could find who had anything to do with shipping in and out of those small towns, and by and large what they found is exactly the same thing: That the people there do not use regulated common carriers other than UPS, except for loads they cannot break into UPS-size shipments or that they cannot carry themselves.

There are an awful lot of cases of these small town receivers just getting into their station wagons and driving into the big distribution points and getting their own stuff. As a general rule, your grocery stores, your hardware stores, and your general stores in small towns are almost all supplied by private carriers, not regulated carriers.

In the first 12 towns we surveyed in this case study method, there were 12 supermarkets, 1 in each town. The first 11 were 100 percent private carriage, and did not use a regulated common carrier for anything. The remaining one used private carriers for about 50 percent of its shipments. Either they were part of a big chain such as Safeway or Winn-Dixie or Pick and Pay or a similar chain, or they were part of a large cooperative like the Independent Grocers Association, and in either case the large group had its own trucks which it used to distribute merchandise to its members in these small communities.

In case of hardware, it was also all private carriage at the time.

The general consensus among these people we surveyed was, what could possibly change if there is deregulation? If I am doing it all myself now, if the common carriers are not stopping here when they presumably have to under regulation, why should I worry about what will happen if regulation is taken away?

I think what we have found since then is completely consistent with that. Although there was supposed to be this "common carrier obligation" to stop there when the regulated carriers had authority to go there, the service they actually rendered was pretty much whatever they wanted to perform in the way of service to and from those towns, and that type of service has not changed since the Motor Carrier Act of 1980.

However, there are now more carriers going there, there are more opportunities for shippers, and a lot of them are getting much better service, but by and large most of the people do not even know that anything has changed. Now I have heard from the lady today from——

Senator PRESSLER. Linda Bickford from the Jack and Jill store.

Mr. RASTATTER. Yes. That is actually the first instance I have heard where someone is pretty dissatisfied with what has happened.

Senator PRESSLER. I am glad you people are here. As you pointed out, we did not have the small shippers and the small users at the Washington hearing.

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Also let me say, I am the greatest critic of Congress. I am not blaming the people in the various agencies necessarily. We in Congress have to take the lead on this and we are trying to sort this out. So if there are things wrong in Washington, be it the deficit or anything else, I say it is Congress fault first, because we have the ultimate responsibility.

But in some of the regulations, there is a lot done in the ICC and the Department of Transportation that it is important that people like you have a touch with the grassroots that we have here in this room, whom I am very proud of.

Let me ask Ms. Gordon this question. In the area of providing common carrier authority to trucking companies, we have heard a lot of complaints of abuse. What generally seems to be the problem is that a big carrier will get authority for a territory and use it only on occasions where it is convenient and especially profitable for them. They refuse to provide any type of ongoing or reliable service to the local community. Therefore, the bones are left to the few local carriers and independent truckers while the meat goes to the big nationwide carriers.

Is this practice consistent with the ICC's policy of deregulation, or indeed with the Motor Carrier Act, and is it taken into account when granting or denying carrier authority?

Ms. GORDON. Well, Senator, as a result of the Motor Carrier Act we have had more expansive authority being granted, which necessitated a reexamination of the traditional common carrier obligation. Just this past September, I believe it was September 15, the Commission concluded in a case called Ex Parte No. MC-77 (Sub-No. 3), that we would continue to use the certificate as a measure of the carrier's holding out. However, because of the more expansive authority, we would be interpreting the obligation a little differently. The way we came out in that case was to say that a company need only provide nondiscriminatory service to the extent of its actual operating capabilities, and this is a deviation which has been noted by the courts.

Senator PRESSLER. I have some additional technical questions, and we will—anyone in the room who has a question for this panel, we can submit it in writing if a question has occurred to you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Would the I.C.C. be prepared to conduct a study based on a survey of those who are actually involved in shipping and receiving freight hauled in rural America by regulated carriers, independent truckers, and other non-private transportation companies?

Answer. While of course I cannot speak for the Commission, as Mr. Southard and I indicated at the hearing, the staff would be willing to conduct some form of follow-up study in this area. The problem is with the commitment of our limited resources. Under the circumstances, it would appear that special funding by Congress would be needed to carry out such a request.

Question 2. What effects has the 1980 Act had on owner-operators? Do you expect owner-operators to take greater advantage of the reforms of the Act in the near future?

Answer. As the Commission has consistently reported to the Commerce Committee during oversight hearings, owner-operators ahve made little use of the Motor Carrier provisions which were specifically designed to assist them.

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There is one exception, and that is Section 7, which enables owner-operators to haul previously-regulated food or edible products (excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, or agricultural fertilizers with their own ICC certificate rather than under a lease agreement, based on a "fitness test." This provision was designed to make it easier for owner-operators hauling exempt commodities from agricultural areas to find backhauls. Since the Motor Carrier Act was passed in July of 1980, approximately 915 owner-operators have received authority under this provision.

In an effort to inform owner-operators about the specific Motor Carrier Act provisions which affect them and to assist them in obtaining authority, the Commission has held educational conferences across the nation. There were 18 such conferences held in FY 1983. These conferences are generally well attended and serve a useful purpose in dispelling misconceptions that owner-operators may have concerning entry.[1]

On a day-to-day basis, the Commission's Small Business Assistance Office provides practical information and advice to owner-operators on any problems they may have. SBAO has also prepared a series of simplified information bulletins on specific topics to further assist owner-operators and others in understanding how to conduct operations as a regulated trucker.

One further action that the Commission has taken is to propose the elimination of the requirement that equipment be leased for a minimum duration of 30 days when operated by its owner. This will enable owner-operators to secure short term traffic when the lessee is unable to provide a load in a timely manner and should generate considerable income. The notice in Ex Parte No. MC-43 (Sub-No. 15), "Elimination of Thirty Day Leasing Requirement," was served on August 29, 1983, and a decision is expected shortly.

The Commission hopes that through these efforts, owner-operators will begin to take greater advantage of the reforms of the Act in the near future.

Senator PRESSLER. We have one additional person who just arrived, Roger Wigen, who is transportation manager of Minnesota Mining & Manufacturing Co. in St. Paul. I imagine you flew down this morning from the Twin Cities. From what I heard on the weather this morning at 6:30 it was rough up there, is that right?

STATEMENT OF ROGER W. WIGEN, TRANSPORTATION MANAGER, REGULATION AND LEGISLATION, MINNESOTA MINING & MANUFACTURING CO.

Mr. WIGEN. It is quite a pleasure to be here; first time we have seen the Sun in 3 weeks, I think.

Senator PRESSLER. We have already heard the rest of the panel, but we are asking people to give a 5-minute opening statement and summarize. We will put your remarks in the record.

We are really glad you are here, so will you proceed?

Mr. WIGEN. First, let me thank you for the opportunity to be here and also thank you for your interest in transportation.

My name is Roger Wigen and I am transportation manager, regulation and legislation, 3M Co., at corporate headquarters in St. Paul, Minn. The reason for my presentation at your hearing is our sincere interest in motor carrier transport reform. 3M has facilities in South Dakota at Aberdeen, Brookings, and Mitchell, wherein we employ about 1,200 employees, and in 1982 our payrolls were about $23.7 million, and in addition we paid taxes in your State of about $554,000.

Of importance to us on a national level including the State of South Dakota, is the national transportation policy as stated in the Motor Carrier Act of 1980. This policy spelled out several objectives

[1] While there have been no conferences conducted in South Dakota, one was held in Fargo, N. Dak. on August 27 and 28, 1982.

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that promote competitive and efficient transportation services to: (*a*) meet the needs of shippers, receivers, and consumers; (*b*) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; and (*c*) allow the most productive use of transportation equipment and energy resources.

3M applauds and supports those objectives and is very pleased by the marketplace changes that occurred since enactment of the 1980 Motor Carrier Act. It has created a more competitive environment and this historic legislation has allowed our company the flexibility we need to purchase truck transportation services that best fit our marketing requirements.

With respect to 3M manufacturing operations in South Dakota, deregulation has allowed us to work more closely with individual carriers to establish efficient distribution programs and truck services. With American Freight Systems, a South Dakota-based motor carrier, we have a contract to handle LTL freight under a formula-rate-pricing system from and to our plants in Aberdeen and Brookings. We are also currently discussing a contract with Midwest Coast, another South Dakota carrier, to handle our truckload freight based on guaranteed mileage from and to these same plants.

The benefits of arrangements like this, both LTL and truckload, which we call partners in progress relationships, include simplified pricing, improved billing accuracy, overcharge claim reduction, and, probably most important, an annual predictable cost for 3M and revenue base for the carriers. These benefits in our judgment would not have been possible under the more restricting regulatory structure that existed prior to the 1980 reform.

We are pleased that earlier fears about diminished service to smaller and rural communities have not been realized. 3M has not had, nor do we anticipate, any significant problems at any of our many and often remote, shipping points in securing the trucking services necessary to assure the efficient movement of our products, raw materials, and packaging supplies.

Based on our experience under the Motor Carrier Act, we believe that further reductions in the economic regulation of trucking would benefit not only 3M, our customers and suppliers, but also the shipping public in general. We support elimination of economic regulations which are not necessary to insure the safe operation or which are not needed to protect the public interest.

3M's experience is very similar to that of other corporations and businesses. We are an active member of the National Industrial Transportation League and as such we participated in the league's annual meeting last month in Kansas City. The league, as I am sure you are aware, Senator Pressler, is the largest national trade association of shippers and receivers, and represents entities of all sizes, large, medium, and small.

At last month's meeting, corporate transportation professionals from all parts of the country reaffirmed their support for further reductions in the Federal regulation of the trucking industry. In addition, league members who ship or receive goods from almost every industrial or business location in the United States, including rural and isolated points, called for the elimination of the

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trucking industry's antitrust immunity for collective ratemaking. 3M supports the actions taken by the league and other shippers seeking to remove Federal barriers to the efficient marketing and delivery of truck transportation services.

Perhaps the most pressing problem facing the trucking industry and its customers is the proposed heavy vehicle use tax which, because of the substantial cash outlay required, acts as a significant entry barrier to those wishing to engage in the interstate trucking. These entry fee barriers are scheduled to take effect July 1 next year. While we fully support the revenue allocations made by the Surface Transportation Assistance Act, we believe that a more equitable system for raising these revenues without imposing entry barriers is needed.

The National Industrial Transportation League members, including 3M, commend you for the leadership role you have taken in supporting S. 1475. The league members believe that this legislation, which would substitute an additional tax on diesel fuel for the proposed heavy use taxes, provides the best solution to assuring that STAA revenues are raised in a manner that does not put an undue burden on or impose operating obstacles for the trucking industry, both for-hire and private.

I thank you for the opportunity to be here and present our views, and I am ready to answer any questions you may have.

Senator PRESSLER. Thank you. I think your testimony indicates that you feel that the Motor Carrier Act of 1980 is going well, but that you would like to see the diesel fuel thing changed. There are really two categories to your testimony, is that correct?

Mr. WIGEN. That is correct.

Senator PRESSLER. We have had testimony from Morrells and from you basically, and from the Government persons, essentially which has contradicted some testimony from some of the smaller truckers and shippers who we heard from before you came. But you might look at their testimony. We will provide you a copy of it.

I might say that I want to thank the three people from the Government who are here, although we have some disagreements. I think our people of South Dakota are always glad to have people from the Government here.

And I might ask if you could locate yourself over toward that side of the room slightly. If some people have comments, this is a chance to express them, either in writing or personally. I do not know how your airplane schedule is, but afterward it would be appreciated if you are available to visit people. I think we have in this room probably the trucking and transportation people of our State.

So I very much appreciate your being here, and we will have some additional written questions for you. Thank you very much.

[The statement follows:]

STATEMENT OF ROGER W. WIGEN, TRANSPORTATION MANAGER, MINNESOTA MINING & MANUFACTURING CO.

Good morning; my name is Roger W Wigen, I am transportation manager, Regulation and Legislation, Minnesota Mining & Manufacturing Co., Corporate Headquarters, St. Paul, Minn.

3M is a highly diversified manufacturer with 40 operating divisions and departments, which produce more than 45 different product lines, and more than 110,000

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individual product items. Major markets served by 3M include communications arts, construction and maintenance, consumer market, electronics, health care, industrial production, office—training and business, safety and security, transportation equipment manufacturing and maintenance, and voice, video, and data communications.

3M had world sales of more than $6.6 billion in 1982. Domestic sales were $4 billion. Products for these sales were produced in 93 communities in 32 states. 3M paid taxes in 1982 of more than $625 million and employed more than 50,000 employees in the United States.

3M's South Dakota facilities include plants at Aberdeen, Brookings, and Mitchell, with 1,200 employees. 1982 payrolls were about $23.7 million, and tax payments about $554,000 in this State.

The national transportation policy, as stated in the Motor Carrier Act of 1980, spells out several objectives. They include promoting competitive and efficient transportation services in order to. (A) meet the needs of shippers, receivers, and consumers; (B) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public; and, (C) allow the most productive use of equipment and energy resources.

3M applauds and supports these objectives, and is very pleased by the marketplace changes which have occurred since enactment of the 1980 Motor Carrier Act. The more competitive environment created by this historic legislation has allowed our company the flexibility we needed to purchase truck transportation services that best fit our marketing requirements. This flexibility helped to mitigate the effects on 3M of the past recession, and facilitated our participation in the general economic recovery.

With respect to 3M's manufacturing operations within South Dakota, deregulation has allowed us to work more closely with individual carriers to establish efficient distribution programs and truck services. Working with American Freight Systems, a South Dakota-based motor carrier, we have contracted to handle less-than-truckload, LTL, freight under a formula-rate pricing system to and from our plants at Aberdeen and Brookings. We also are discussing with Midwest Coast, another South Dakota carrier, a contract, based on guaranteed mileage pricing, to handle our truckload freight for these plants.

The benefits of these LTL and truckload arrangements include simplified pricing, improved billing accuracy, overcharge claim reduction, and an annual predictable transportation cost for 3M, and an annual predictable revenue base for these carriers. Many of these changes would not have been possible under the more restrictive regulatory structure which existed prior to the 1980 reform law.

We are pleased that earlier fears about diminished service to smaller and rural communities have not been realized. 3M has not had, nor do we anticipate any significant problems at any of our many, and often remote, shipping points in securing the trucking services necessary to assure efficient movement of our products.

Based on our experience under the Motor Carrier Act, we believe that further reductions in the economic regulation of the trucking industry would benefit not only 3M and our customers and suppliers, but also the shipping public generally. We support elimination of all economic regulations which are not necessary to ensure the safe operation of this industry, or which are not needed to protect the public interest.

3M's experience is very similar to that of other corporations and businesses. As an active member of The National Industrial Transportation League, we participated in the League's annual meeting, which was held last month in Kansas City. The League is the largest national trade association of shippers and receivers, and represents entities of all sizes—large, medium, and small.

At last month's meeting, corporate transportation professionals from all parts of the country reaffirmed their support for further reductions in the federal regulation of this industry. We support this recommendation.

In addition, these individuals, who ship or receive goods from almost every industrial or business location in the United States, including rural and isolated points, called for the elimination of the trucking industry's antitrust immunity for collective ratemaking. 3M supports the actions taken by the League and other shippers' groups seeding to remove all federal barriers to the efficient marketing and delivery of truck transportation services.

Perhaps, the most pressing problem facing the trucking industry and its customers is the proposed heavy vehicle use taxes—which, because of the substantial cash outlay required, acts as a significant entry barrier to those wishing to engage in interstate trucking operations. These entry fee barriers are scheduled to take effect on July 1 of next year.

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While we fully support the revenue allocations made by the Surface Transportation Assistance Act, we believe that a more equitable system for raising these revenues, without imposing entry barriers, is needed.

We commend you, Senator Pressler, for the leadership role you have taken in supporting S. 1475. The NIT League and its members believe that this legislation, which would substitute an additional tax on diesel fuel for the proposed heavy use taxes, provides the best solution to assuring that STAA revenues are raised in a manner that does not put an undue burden on, or impose operating obstacles for, the trucking industry, both for-hire and private.

Thank you for this opportunity to present our views. We are ready to answer any questions you may have.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. In your review, what has been the effect of regulatory reform of the trucking industry on your business?

Answer. Regulatory reform has enabled us to establish reliable carrier relationships and commitments necessary to manage our transportation business without unnecessary delays.

A. Simplified Pricing.
B. Annual Predictable Costs.
C. Improved Service and Equipment Standards.
D. Improved Billing Accuracy.
E. Overcharge Claim Reduction.
F. Improved Carrier Responsiveness.

Question 2. You mentioned in your testimony that 3M has not had any significant problems at any of your many, and often remote, shipping points in obtaining trucking service. Do you think your company's experience is comparable to that of smaller manufacturers over the past three years?

Answer. Many of our 130 shipping/receiving locations are, in fact, individual small manufacturers with independent transportation requirements. They have not experienced any significant problems. This is not necessarily related to our Corporate carrier relationships because many of our shipping/receiving locations have separate commitments with regional and/or local carriers.

I have not had any experience or dialogue with other smaller manufacturers but would surmise that there are enough carrier options to manage any size business either directly or through an association of manufacturers.

Senator PRESSLER. For our next panel we have: Mr. Leonard Gidlow from Barber Transportation Co. in Rapid City; Mr. Dennis Snyder, president of the South Dakota Independent Truckers Association from Rapid City; Mr. Regge Rude, Rude Transportation, from Redfield; and Mr. Paul Fletcher of the Iowa Better Trucking Bureau, Sioux City, Iowa.

We welcome you here and would call on Leonard first.

STATEMENT OF LEONARD GIDLOW, VICE PRESIDENT OF TRAFFIC, BARBER TRANSPORTATION CO.

Mr. GIDLOW. Barber Transportation Co. commenced business providing motor common carrier service to western South Dakota in 1984. At present, it is a regional carrier of general freight serving various points in the States of North and South Dakota, Montana, Minnesota, Iowa, Nebraska, Illinois, Missouri, Kansas, Colorado, and Wyoming. Our primary service is sparsely populated and it depends upon motor freight transportation to receive daily necessities and LTL service for all points in the Nation.

The effect of the Motor Carrier Act of 1980 on Barber Transportation has been dramatic. Under the Interstate Commerce Commission prior to the Motor Carrier Act, Barber Transportation Co.

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grew to reach revenues of over $17 million in 1979. In the year 1980, the revenues were approximately $18 million. In 1981, the gross revenues were $18,182,000.

In 1982, with the deregulation really hitting Barber Transportation Co., our revenues dropped to $14.6 million. For the first 10 months of 1983, Barber's revenues were $11,683,000; projected for the year, approximately $13.8 million. During those years, we were able to make a profit, with the exception of the year 1982, wherein Barber Transportation Co. suffered an operating loss of $298,000.

Prior to 1980, there were approximately 4 to 5 carriers serving this area; today we have 10 to 12 major carriers serving this area.

After incurring the loss of 1982, Barber undertook a very serious study on the type of service that we were offering the rural communities, and we instituted significant cuts in the service to these rural communities.

In 1979, Barber Transportation Co. had 561 employees in our system, and out of that 299 were employed in the State of South Dakota. Since the Motor Carrier Act of 1980, our employment has gone down to its present level, which is 226 employees in the system, of which 137 are located and domiciled in South Dakota.

This is a loss of 162 employees; which is more than 50 percent of the employees located in South Dakota, which is a great economic loss, not only for our company but for the State. The loss of employees is due to lost business created by allowing new carriers to come into our area.

We find this new competition has created predatory pricing situations and dilution of traffic to carriers who were once our interline friends who are now serving the area on a direct basis. Those carriers still want to give us freight to distribute within areas of 100 to 125, and all these to the small communities, of course at a lower revenue figure than if we had received this traffic at a major terminal.

All the comments you hear is freight rates will decrease with deregulation. If you will look at my exhibits A and B, which show the rate increases prior to enactment of the Motor Carrier Act and the increases applied to the rate structures that are in our area after the Motor Carrier Act, you can see that these rates have gone up dramatically and at a much accelerated pace after the enactment of the Motor Carrier Act of 1980.

The reason these rates have gone up so dramatically is that the carrier cost has increased because of the dilution. Traffic that was once available to us is now distributed to more carriers and therefore increasing everyone's cost. It certainly is a waste of fuel and productivity.

And somewhere, someone must recognize that the Motor Carrier Act did not increase tonnage. It only allowed more people to rehandle or handle the same shipments that were there before the act was put into effect.

The Motor Carrier Act of 1980 also required the ICC to make a small community truck service study. I have gone into great detail in my statement about receiving the information and a copy of the study, and my remarks are included in my statement, which are as follows:

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One: Selection of the people in the survey has no basis to reach constructive conclusions about services to small communities.

Two: I question the survey document that was used because it included in the survey parcel post, small UPS shipments and bus package service.

As a carrier, we are required to submit to the ICC information about our operations and are parties to their continuing traffic study. We also have to submit detailed information to the various tariff bureaus that we participate in, which again is based on a scientific basis. Therefore, I know the Interstate Commerce Commission has the ability to extract information that is necessary to give any type of picture required in the motor carrier business. This survey has been conducted in a very haphazard manner and I cannot see Congress giving any weight to this particular study when applied to South Dakota.

We have cut service. Barber Transportation Co. has run into situations where there is no stability in our industry today. We have carriers that have been doing business with us either taking chapter 11 or chapter 13 and have gone bankrupt.

This of course has created a situation in which we are not able to receive any money for services rendered and will probably write it off as noncollectible. To counteract this, it seems that we have to deal with these types of carriers and receive our money before we receive the shipment, which again adds to transit time.

Without collective ratemaking and the various tariff bureaus publishing tariffs so that everyone can know what the rates are, we will be in the wilderness. We also need collective ratemaking and antitrust immunity so that we may conduct the business that is necessary in the Nation with our interline connecting friends, as well as getting the information to the public.

S. 2038, the Trucking Competition Act of 1983, introduced by Senator Packwood on November 1, 1983, is a bill that would completely deregulate the motor carrier industry. Under sections 4 and 5 of the act, there is a situation where a person is fit, and I refer you to the grant of authority to Wikatt's, wherein the president of this company is in prison as a result of convictions for drug dealing and second degree murder.

In late June, the U.S. Court of Appeals for the District of Columbia thence ordered the Commission to grant authority to this company. If this is the case, under Senator Packwood's bill I find it very difficult to find out how you would prove a carrier unfit.

Large corporations or wholly owned subsidiaries that have unlimited financial resources will be able to withstand economic disasters that will occur if the passage of this bill is successful. The rural communities will probably suffer untold harm, because under the Motor Carrier Act of 1980 carriers are serving the populous areas and leaving the hinterland to whatever and whomever will serve that particular area, if at all.

I cannot understand Congress letting the ICC operate under its present conditions, wherein the chairman and other Commissioners have testified before other Commissions that they have not talked to each other for 5 or 6 months. This seems impossible.

The heavy user's fees scheduled to go in effect July 1, 1984, is a fee that certainly the motor carrier industry or Barber Transporta-

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tion Co. cannot afford to pay. I do not know how, by using the AASHO test, such wrong conclusions could be derived from this test. I would certainly like to have the committee receive a copy of "Why Highways Wear Out", as produced by the American Trucking Association and the Regular Common Carrier Conference.

Under these circumstances, I would certainly hope that this committee will recommend that the adoption of the diesel differential tax, as suggested by the industry, go in effect and not let the 800 percent increase in user's fee taxes go into effect on July 1, 1984.

I thank Larry Pressler and this committee for letting me appear here today and present this testimony, and I only hope that some of the comments that are contained in this statement will give you a better insight of what has transpired in the motor carrier industry in the State of South Dakota.

Senator PRESSLER. Thank you. I think that was an excellent statement.

Your point on the tonnage, I want to pursue that a little bit because the Government witness said tonnage was way up. You made the point that that study may be inaccurate because tonnage may be loading and reloading the same things more. Is that your point?

Mr. GIDLOW. I think that is one of the points. I think if you remember his testimony, it was the top 100 carriers or whatever it may be. I unfortunately am not in that top 100.

Senator PRESSLER. We are going to work with you and others to get these studies straightened out. Kevin and I are going to be working in preparation for this meeting I am going to have with Senators Exon and Hollings and others who are interested in this subject.

[The statement follows:]

STATEMENT OF LEONARD D. GIDLOW, VP—TRAFFIC ON BEHALF OF BARBER TRANSPORTATION CO.

My name is Leonard D. Gildow. I am Vice President of Traffic of Barber Transportation Co., whose business address at P.O. Drawer 1970, Rapid City, SD 57709. I have been employed by Barber Transportation Co. in my present position for over 20 years. It is my responsibility to the corporation to appear before various Commissions and/or Rate Bureaus and present information on behalf of the Company.

I am also a member of the Rocky Mountain Motor Tariff Bureau Rate Committees, and I am a member of the National Classification Committee representing the State of South Dakota.

In my everyday work I am continually working with our operations, traffic and sales, and the information contained in this statement is per my knowledge and from my experience in working for Barber Transportation Co.

I would like to, at this time, thank Senator Pressler for allowing me to appear before this Committee, and I thank also the Committee for making themselves available so that hearings of this type can be held in South Dakota.

I would like to advise the Committee that Barber Transportation Co. is a South Dakota corporation, and the territory that we serve is bordered on the east by Minneapolis/St. Paul, Minnesota and Chicago, Illinois; on the west by Billings, Montana, and on the North by Williston, North Dakota; and on the south by Denver, CO and Kansas City, MO.

We also have terminals located at Miles City, MT.: Omaha, Nebraska; Sioux Falls, South Dakota; Dickinson, North Dakota; Fargo, North Dakota, and Bismarck, North Dakota. From the above terminals we serve an area basically bordered west of the Missouri River in South Dakota, the northeastern section of Wyoming, the eastern portion of Montana, and the northwestern section of North Dakota.

I would like to point out at this time that the average population of the area we serve would be approximately one person per square mile. In many cases Barber Transportation Co. is the only means of transportation for the small communities

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located in this area. Because of this area being so lightly populated, the majority of our shippers and receivers of freight are small family-run business, usually employing 15 or fewer people. There are some exceptions of larger companies which employ up to 250 employees, such a Homestake Mining Co. located at Lead, SD; Black Hills Power & Light Co., Rapid City, SD; Montana-Dakota Utilities Co. located at Bismarck, ND.

I would like to break down this statement into three parts. The first part will deal with and discuss the deregulation under the Motor Carrier Act of 1980 and its affect on Barber Transportation Co., and what affect this has also had on Western South Dakota. The Second part will deal with the future impact of the proposed legislation under Senate 2038, a bill to totally exempt pricing practices from the I.C.C. and to sunset all I.C.C. trucking industry functions. The third part will deal with the highway users fee to go into effect 7/1/84.

I. THE EFFECT OF THE MOTOR CARRIER ACT OF 1980 ON BARBER TRANSPORTATION CO.

Barber Transportation Co. has been in business since 1948, which means that we have been in existence for 35 years serving the territory described herein. In this time span Barber Transportation Co. grew and reached revenues of over $17 Million in 1979 under authorization of the Interstate Commerce Commission grants of authority. During this time frame, Barber Transportation Co. purchased small segments, but no major segments, and only by direct application to the Interstate Commerce Commission and proving public convenience and necessity we were granted additional routes that allowed us to grow in this area.

Since the enactment of the Motor Carrier Act of 1980 Barber Transportation Co., in the year of 1980, had gross revenues of $18,002,536.71 with a profit after taxes of $117,112.11. In 1981 Barber's gross revenues were $18,182,269.23, with profit after taxes of $251,713.15. In 1982 gross revenues of Barber Transportation Co. dropped to $14,649,986.69, with an operting loss of $298,605.44. For the first ten months of 1983 Barber's gross revenues are $11,683,136.11, with profit after taxes of $317,924.22. We estimate that the gross revenues of Barber Transportation Co. for the total year of 1983 will be approximately $13,800,000, with profit after taxes of $200,000.00.

As you can see from the above figures, since the inactment of the Motor Carrier Act, it did not have a great effect on Barber Transportation Co. in the year of 1980. In 1981 we encountered in the last quarter some effect. Instead of having a larger increase in gross revenue it was minimal of $180,000.00. But the drastic impact of the act happened in 1982, where Barber Transportation Co.'s gross revenue dropped to $14,600.00. This also, in turn, showed a loss of approximatly $300,000. You can also see the effect is still working on our financial statement, whereas our revenue is dropping approximately $800,000 in 1983. While it is certainly true that in 1983 we underwent a recession, it is very difficult to determine how much traffic or revenue was lost due to the recession or to other competitors.

Prior to 1980 in the territory that we serve there was approximately four to five carriers serving in this area, and today we have approximately 10 to 12 major carriers and thousands of other carriers that we are unable to recognize in the motor carrier industry, such as contract carriers or carriers that are domiciled in the east or west that we are not familiar with but see on the streets everyday.

After incurring a loss in 1982 Barber Transportation Co. undertook a very serious study of the type of service that we are offering the rural communities that we serve. Many communities that were receiving five days a week service were cut back to three days a week service, or sometimes two days a week service. Other communities that were receiving three days a weeks service were cut to either one or two days a week service. Some communities were placed on a basis of a freight available, with no service available only if there is freight in a sufficient amount to make it economically feasible to go.

For Barber Transportaiton Co. in 1979, the gross payroll was $8,967,960.76. Our total number of employees was 561, and out of that 299 were employed in the State of South Dakota.

In 1980 our gross payroll was $9,036,963.05. We had a total number of employees of 512, with 284 employed in the State of South Dakota.

In 1981 we had a gross payroll of $9,076,209.85. We had a total of 439 employees in our system, and out of that 235 were employed in the State of South Dakota.

In 1982 we had a gross payroll of $7,683,985.73. Total number of employees was 382 in our system, and out of that 206 were employed in the State of South Dakota.

So far in 1983 our gross payroll is $4,998,491.05. Total number of employees in the system is 226 and our number of employees in South Dakota as of 11-26-83 was down to 137.

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You can see that Barber Transportation Co. has been greatly affected as being able to employ South Dakotans. From a high in 1979 of 299 employees, we have shrunk this amount of employees to 137, or a loss of 162 employees, which is more than 50 percent. As you can see by these figures, the Motor Carrier Act of 1980 has certainly had a great effect, not alone on Barber Transportation Co. but the number of employees that we can hire in the State of South Dakota.

COMPETITION

Barber Transportation Co. maintains open terminals that other interline carriers who want to do business with Barber Transportation Co. may do so. Prior to the Motor Carrier Act of 1980 and from our start in 1948, Barber Transportation Co., because the traffic that comes into our area being a non-manufacturing area, needed interline carriers to complete our business commitments. Therefore, through the years we developed interline relationships of other carriers at various terminals to handle joint traffic between ourselves. Under the Motor Carrier Act of 1980, with the lessening of reasons for granting authority, we now find that the carriers that we have routed this traffic with for many years are now coming directly into our territory, and therefore depriving us of the traffic that we had developed jointly. We also find in this regard that carriers coming into a new territory who have very little traffic will allow discounts or introductory offers on their services, which will reduce rates and therefore create a predatory pricing situation. The carrier that had the traffic has to meet the competition or lose the traffic in its entirety. We also find that these carriers who were once interchanging traffic at other terminals are now going to terminals in South Dakota, therefore shorthauling ourselves and wanting to make the distribution in areas of 100 to 125 miles. We also find contract carriers who have contracts with major shippers dropping freight off to us at various locations, wanting us to continue to haul to these small communiites. Of course at a lower revenue figure that if we had received this traffic in a major terminal.

RATES

In discussing rates, I have requested that the Middlewest Motor Freight Bureau send to me a history of the general rate adjustments in the region we serve for the years of 1978 to 1983. I attach as Exhibits A & B [1] this information.

Exhibit A shows that the rates structures as outlined apply in Middlewest Tariff 526 G (which basically is that territory between Chicago and east to the Buffalo/Pittsburgh line, and our region). The top of the page shows that Class 100 for 500 miles and the various increases and dates. This shows a 24.9 percent to 22.6 percent up to 10,000 pound increase from January 1, 1978 to December 10, 1979 and then it continues on further from April 7, 1980 until April 1, 1983, with a cumulative increase during that time frame of 84.4 percent to 43.1 percent increase up to 10,000 pounds. Total cumulative increase for this period is 130.2 percent to 75.3 percent. This is also done on Class 100 for 300 miles. The bottom of the page gives the percentage of increases that were received in each one of the columns. Exhibit B is the same as Exhibit A, but covers MMFB Tariff 502-E. This tariff publishes rates Chicago and west to North Dakota, South Dakota, Nebraska, Colorado line.

All information about rate stuctures under the deregulation and the Motor Carrier Act of 1980 is that rates are less. It is certainly apparent from these two exhibits that the rates that were presently in effect priot to the Act were increased at a much lesser pace than the increases that have accumulated since the Act went into effect. All rates have increased drastically.

It is true motor carrier costs have increased. The reasons for the necessity of obtaining a rate structure as outlined on these exhibits, we cannot contribute the whole total percentage occurring to the passage of the Motor Carrier Act of 1980, but on the other hand, the carrier's major cost will increase with traffic dilution, predatory pricing, or the economy.

It is quite apparent from these exhibits that no one can say that the freight rates have gone down.

I.C.C. SMALL COMMUNITY TRUCK SERVICE STUDY

Another question that came up after the enactment of the Motor Carrier Act of 1980 was its service to small communities. I was under the opinion that the Interstate Commerce Commission has always submitted information that on their small

[1] The exhibits were not reproducible and are in the Committee files.

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shipments survey, everything is going along fine and there is no decrease in service, and everybody is content, knowing we have decreased service and raised rates.

In this regard I contacted Senator Pressler's office and requested if at all possible he could find out the people that were covered in the survey for the state of South Dakota. From the information that I received from his office, it shows that the I.C.C. studies cover the town of Lead, SD; Gettysburg, SD; Estelline, Pierre, and Selby, SD. The study that was submitted was for July of 1981 and January of 1982.

Barber Transportation Co. is a major carrier serving Lead, SD and Pierre, SD. There was one company picked in Lead, SD and six shippers selected from Pierre, SD. When I got this information I immediately went to our computer to see if any of those shippers were coded as being a substantial shipper in either location, and they were not.

Therefore, I made a study for the year of 1982 for these particular shippers and/or receivers of freight. The shipper and receiver in Lead, SD was Twin City Redi-Mix, Inc., and I was, after going through our bills inbound and outbound to Lead, unable to find any shipments during the whole year of 1982. I then went through our documents that we had for Pierre, SD, and for the year of 1982 I found two shipments to Black Hills Kawasaki; one shipment weighed ten pounds and moved on January 13, 1982; the second shipment moved on August 5, 1982 and weighed 25 pounds. I was also able to find two shipments that we moved for the Epicurian Restaurant; one moved on July 28, 1982 and weighed 303 pounds, and the other moved on July 30, 1982 and weighed 471 pounds. I was unable in my study to find any shipments for the Pierre Motel. Old World Arms, South Dakota Education Association, and Waltman Carl Cabinet Shop.

After making this study and finding very little information, I received a copy of I.C.C. Small Community Truck Service Study. I was concerned right away because under the helpful hints, which starts as follows:

"We understand that many of your who answer these questions usually only send and receive small amounts of freight, or even simply small packages. We are still very interested on how these shipments are transported. Therefore, when a question refers to 'shipments', you should keep in mind any type of parcel, general freight, merchandise, equipment, or business supplies. (You may disregard first class mail or home deliveries."

Further, on Page 2 of the questionnaire, No. 1 Private and For Hire Trucking, Part B, the question is:

"In the last six months did your company send or receive any shipments for and by FOR HIRE TRUCKS such as UPS, Parcel Post, other parcel carriers, general freight trucking companies, or other regulated trucks.

"Also include shipments by bus package service."

I thought this study was to see what affect the Motor Carrier Act of 1980 had on small communities. I would question the validity of using a restuarant and a motel and a South Dakota Education Association as three out of the six people located in Pierre, SD to complete this study.

After going through this questionnaire and through our records, I certainly could not use these shippers and receivers fo freight to show what the service is to small communities in Western South Dakota. I have great doubts about its validity. As a carrier, we are required by the I.C.C. to submit information to it about our terminals, location, what days we operated, and are involved with the continuing traffic study conducted by the I.C.C. This is the type of data necessary to reach any valid conclusions.

Barber Transportation Co. is also involved with the continuing traffic studies as a requirement of the Commission through the various tariff bureaus that we participate in, which again is based on a scientific basis of selection. As far as I can see through this selection, it was very haphazard at best, and would have difficulty bearing any weight Congress would need in this regard.

STABILITY WITHIN THE INDUSTRY

Barber Transportation Co. has found it very difficult in dealing with interline carriers because of the instability in the industry that exists today. We find ourselves faced with a lot of carriers with which we do business are financially unable to meet their commitments and have taken either Chapter 11 or Chapter 13 and have gone bankrupt. This has tied up money that we are unable to collect, even though we have performed the service, and will take years to decide whether we are going to get any money or if we have to write these off as non-collectable.

In the same regard we are finding carriers who want to give us traffic in our area in the shipment size of 500 or less pounds that they cannot economically serve. We

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find that we are having difficulty moving this traffic unless we receive payment before the shipment moves, which, of course, delays the transit time. It has been our experience if we do not do that we cannot find a domicile of these carriers, nor will they either reply or pay us for our services that we perform for them. Therefore, we have had to take a very hard position that we receive our monies before we transport the merchandise. This in turn, of course, delays tha shipment and transit time is increased until we receive our funds.

We have many of our customers who have to submit bids for business. With the rate structures fluctuating as greatly as they are, trying to obtain freight rate information in order for them to be successful in being able to bid a project is a guessing game. Before the Motor Carrier Act of 1980 we had some stability in the industry in that we could attempt to help our customers by trying to anticipate some of the increases that would be coming forth in the future year. At this time we can only tell what the present rates are, and we have no idea what they will be when it comes time to move this merchandise into their project. This has got to cause a chaotic *situation,* whereas the customer wants to achieve success in the bidding, but, on the other hand, he has no stability in knowing what his freight charges are going to be. Without this stability I do not see how these people can possibly constructively give a bid on any project that they would like to bid, and we both certainly need stability in the rate structure area to correct this situation.

II.

Senate bill 2038. the trucking competition act of 1983 introduced by Senator Packwood on November 1, 1983, is a bill that will completely deregulate the Motor Carrier Industry. Things that I have discussed in the first part of this statement will only deteriorate further under this particular act. Under this bill, under Section 4 and Section 5, Motor Common Carrier Entry and Motor Contract Carrier Entry, I guess one of my concerns that the person is fit, willing and able to provide the transportation to be authorizedd by the certificate or permit.

To show the situation has changed, I would like to refer the Committee to the grant of authority to Wilkatt's, where that president of this company is in prison as a result of convictions for drug dealing and second degree murder. In late June the U.S. Court of Appeals for the District of Columbia thence ordered the Commission to grant expanded authority to the company. If this company can be proven fit under the circumstances, I cannot understand or comprehend what would make a carrier unfit so that they would not be able to obtain operating authority. It is very difficult for me to find out, with the Motor Carrier Act of 1980 and this act, what happened to the National Transportation policy of the United States of America? I am sure that the Congress does not realize what will happen to the trucking industry under this proposal. I am sure most of my colleages in the trucking industry do not mind fair competition. The only thing that total deregulation of our industry would do is turn the business climate into more of a jungle wherein the fittest will survive.

There are many large corporations or wholly owned subsidiaries that have unlimited financial resources that will be able to withstand the economic disasters that will occur if the passage of this bill is successful. Companies like Barber Transportation Co. will probably not be able to be in existence, and the customers that we have so loyally served for 35 years will be at the mercy of the survivors. If they would decide not to give any service they would have to do whatever the surviving carriers would dictate. We have seen this occur under the current interpretation of the Motor Carrier Act of 1980 by the I.C.C., where carriers are serving the populous area and leaving the hinterland to whatever or to whomever will serve that particular area with reduced service or no service at all.

I cannot understand Congress letting the I.C.C. operate under its present conditions, wherein the Chairman and other Commissioners have testified before other Committees that they have not talked to each other for five or six months. If a trucking company would operate in the same manner as the I.C.C. is operating today, they would not be a survivor. Of course, I assume, that is one of the reasons why this bill was introduced.

In today's business world we are surrounded with other industries that have been totally deregulated, such as the airlines and telephone, and see what results have happened there. I think it would be a very bad mistake to enact this bill.

III. USER FEE

The heavy users fee is scheduled to go into effect July 1, 1984. There will be others here today testifying to more detail in this regard of the 800 percent increase

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on user fee taxes. I will very briefly state that Barber Transportation Co. certainly cannot afford to have an 800 percent increase of truck taxes. The industry has stated its position of the erroneous information derived under the AASHO test and wrong conclusions derived from this test. In South Dakota, when you completely ignore what weather will do to highways, can this new information have any validity? It simply is not possible to think that this would not be taken into consideration. It is also true that many parts of the interstate system that we transverse, designed life span was for 20 years, as many portions of this construction is now in that age area. The alternative situation that the motor carrier industry has taken wherein a diesel differential tax is certainly very feasible and should be adopted. Our highway systems are our life arteries for the continued success of the trucking industry, and it is certainly necessary that we maintain good highways for national defense. I think some interesting facts that this Committee should recognize is information contained in "Why Highways Wear Out" as produced by the American Trucking Association and the Regular Common Carrier Conference located at 1616 P. Street N.W., Washington, D.C. 20036. I would like to briefly point out a few facts contained in this document.

"Trucks paid into the Highway Trust Fund in 1957 to 1981, 25 years, a total of $49 Billion, which is 43 percent of the total".

"In 1981 the share by all trucks had climbed to 50 percent, 3.1 Billion out of the 6.2 Billion though trucks made up only 20 percent of the vehicles".

"Trucks over 26,000 pounds gross weight made up only 1.1 percent of the total motor vehicles, but paid 26.5 percent of the trust fund taxes".

"Highway Trust Fund taxes paid by the typical private automobile annually, $34.00. Federal Highway Trust Fund taxes paid by the typical 5-axle combination truck annually, $1,746.00 of 51 times as much as the car".

Under these circumstances, I would certainly hope that this Committee recommend the adoption of the diesel differential tax, and not let the 800 percent increase users fee taxes go into effect July 1, 1984.

Again I thank Senator Larry Pressler and this Committee for letting me appear here today before them and present this testimony, and I only hope that some of the comments that are contained in this statement will give you a better insight of what is transpiring in the motor carrier industry in the State of South Dakota.

Senator PRESSLER. Dennis, we are glad to see you here from Rapid City, a good friend and one of the great voices for trucking in South Dakota. I am really glad you were able to come.

STATEMENT OF DENNIS SNYDER, PRESIDENT, SOUTH DAKOTA INDEPENDENT TRUCKERS ASSOCIATION

Mr. SNYDER. I thank you for inviting me and giving me the opportunity to appear here today.

I am Dennis Snyder. I am president of the South Dakota Independent Truckers Association.

I hope that I can give this testimony the way my people would like to see it given. This portion of the testimony will be on deregulation and the effect it has been having on South Dakota ITA members and other owner-operators. It has not been good. We will try to explain our feelings on this.

In the event of a national emergency in our country today, the owner-operator I do not believe would be in a position to help. Our equipment is old. Financially we are not able to help. With the effects of deregulation, which I hear have had mostly to do with the economy—my people do not believe that—but with deregulation there would be very few owner-operators that could survive.

With what we have felt of re-regulation, it is already a disaster. It has brought predatory rate cutting below our cost of operation. Along with this came ICC feelings they do not have to do any enforcement work on rules and regulations in effect at this time.

We have numerous problems collecting from authorized carriers, and I might add that many of them are members that are leased to

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authorized carriers. Whenever we contact the ICC on this problem, we get the answer that since deregulation we do not have the funds or personnel to do police work. Already this is a serious problem.

We do not feel that deregulation is even here yet. We are afraid to think what would happen if full deregulation were actually here. We have some money due from carriers that has been owed for over 6 months. According to rules set down by the Commission with regulation, the shipper pays the carrier within 7 days, the carrier pays the owner-operator within 15 days. It seems like all of these rules have went out the window with what we thought was reregulation.

With the predatory rate cutting which was supposed to filter down to the consuming public—and to our knowledge it has not—it has become a shippers' market. The shipper is going to say, sure, this is great, we like this type of a situation.

With regulation—I will double up here with some of the other testimony—the small communities were served, and we know by fact that that is coming apart. They are not being served any more. For poeple, myself and my people, deregulation has not been good.

Now, on the user fee taxes. Of course I would be duplicating testimony, but we are in favor of the diesel differential tax. I have looked at some of these bills that have been introduced. We were in favor of keeping the original $240 on, proof of paying the $240 before you could license your truck, and putting the rest of it on the pump, because by IRS's own estimates, right now between 19 and 20 percent of the trucks do not pay anything. They do not pay their use tax, $240; they do not pay.

So if we could, like S. 138 which you, Senator, were good enough to introduce for our benefit, had those conditions in it.

I believe that will end my testimony. Thank you.

Senator PRESSLER. Dennis, we thank you. You are one person that can call a meeting and get between 150 and 200 truckers in the same room. That is an unusual man in this State. And your group publishes a newsletter which I read regularly and appreciate very much.

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS THERETO

Question 1. In your view, what specific actions could the Interstate Commerce Commission take to improve the financial performance of owner-operator?

Answer. The ICC could comply with the rules and regulations that were already in effect before the Motor Carrier Act of 1980, Whether that be administrative or congress-mandated that were to protect the owner operator from unscrupulous carriers and brokers supposingly licensed by the ICC.

Question 2. What is your opinion of the ICC's administration and implementation of the Motor Carrier Act of 1980?

Answer. In my opinion the ICC's has overstepped the authority that congress gave them in their wild rush to deregulate the trucking industry. I feel they are disrupting what was the greatest truck transportion system in the world. Their hopes for consumer saying has not been realized, a few middle men have reaped the profits of their actions.

Question 3. Independent truckers thus far have not taken advantage to any large degree of the reforms of the Motor Carrier Act of 1980 which make it easier for owner-operators to haul more types of freight. Is this the case also in South Dakota? If so, why?

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Answer. True enough the Motor Carrier Act of 1980 was suppose to make it easier for the owner operator or independent trucker to haul more types of freight legal. Now with what the commission is saying was deregulation, which we feel was the intent of congrees to make it reregulation, the relaxing of entry rules on the fedral level gave each and every state the opportunity to impose new taxes and regulations on the trucking industry. This is the case of the owner operator in South Dakota like the rest of our grat nation. It's became nearly financially impossible for a one truck owner operator to take advantage of these relaxed federal rules. We now have 50 countries instead of one to comply with rules and regulations.

[Subsequent to this hearing, Mr. Snyder forwarded to Senator Pressler correspondence that illustrates the problems small, independent operators are experiencing in the fee collection area, as indicated in his testimony. The following exerpts from letters he has written Senator Pressler and the ICC are being inserted at his request to illustrate the problems they are experiencing as a result of the decline in enforcement capabilities of the ICC since deregulation.]

Senator LARRY PRESSLER,
Russell Senate Office Building,
Washington, D.C.

DEAR SIR: As I have stated before in testimony at the hearing in Sioux Falls and in the letter to you and your staff it is becoming a problem collecting monies due owner operators form some carrier and brokers. I am sending you a copy of one instance that has happened to me. As you can see we do have quite a problem. This is over a $4,000.00 problem and quite hard to handle.

JOHN KIRKOMO,
Regional Director, Interstate Commerce Commission, Everett McKinley Dirksen Building, Chicago, Ill.

DEAR GENTLEMAN: As of this date I have been unable to collect monies due me for the comment I moved for this Company or monies on the work I performed in my shop on their equipment.

I have written Mr. Bernard Gallard of the ICC and Mr. Ken Stofferahn of the S.D. PUG concerning this problem. I am aware that both commissions have been in contact with these people, but to no avail. I thank them for their efforts.

At this time it seem that I will not collect what in due me as I stated in my correspondence with your commission December 5, 1983, I feel the authority granted this company to serve the public should also protect the public from this type of activity. I don't feel that a Company like this or any other Company should be allowed to operate at the the expense of small business people or the public. I feel that I have been more than fair in my dealings with these people.

I do work for South Dakota Independent Truckers Association as President. I am now going to ask you if you could write me of the Stand of Policy your commission has on a problem like this.

Senator PRESSLER. I think a lot of the questions I would have at this point we have already covered, but I am going to call on Paul Fletcher for his statement. I might say that Paul is from Sioux City, Iowa, and probably drove up this morning; is that right?

STATEMENT OF PAUL FLETCHER, IOWA BETTER TRUCKING BUREAU

Mr. FLETCHER. YES.

Senator PRESSLER. How was the road? Was it pretty good?

Mr. FLETCHER. Not bad.

Senator PRESSLER. From the Iowa Better Trucking Bureau, Livestock Exchange Co., Sioux City, Iowa.

Mr. FLETCHER. My name is Paul Fletcher. I own and operate the Iowa Better Trucking Bureau in Sioux City, Iowa. My company is a

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license and permit service for approximately 400 to 500 truck lines, owner-operators and independent truckers located primarily throughout northwest Iowa, northeast Nebraska, and southeastern South Dakota.

It is the general consensus of these trucking interests that the free market view of deregulation is far more beneficial for them than the unnecessary Government intervention and restriction that they have had in the past. Total deregulation will allow the independent trucker we serve to indiscriminately haul any commodity to any location for anyone, without having to pay a percentage of their gross revenue to a regulated ICC certified carrier for the use of this authority.

Deregulation also has sharpened competition, so that rates have gone down substantially for the consumer for goods hauled. Thus, the Motor Carrier Act of 1980 is a good first step in achieving deregulation, but more deregulation legislation is needed to bring about a true free market in the trucking industry.

There is no question that less regulation has taken its toll on many truck lines and smaller independent truckers. This has primarily been due to the continuing rise in operating expenses in the face of the rate wars which are being waged in the industry and being fueled by the shippers.

The end result of this particular problem will probably be a continued reduction in the total number of trucks and independents available. There are reports available now that indicate that the rate war bottom is near and that the thinning out process has slowed. Also, these reports show that private carriers can no longer haul their commodities on their own equipment at less cost than for-hire carriage by independents or owner-operators. Those truckers that have survived the lower rates and have been able to replace wornout equipment expect to prosper from future marketing conditions.

We feel that some additional legislation is necessary in conjunction with future dergulation legislation. Early enactment of safety regulations may as a side benefit result in tempering the rate wars that exist, and this already proposed legislation will certainly save lives. Many shippers are allowing some marginal truckers to load their products on about anything that rolls. These marginal carriers have cut maintenance on their trucks to dangerous levels to remain competitive.

The Iowa Department of Transportation has reported a 15-percent increase in safety violations written by its offices in 1983 over 1982. The National Highway Traffic Safety Administration has projected a rise of 40 percent in traffic fatalities in medium and heavy trucks by 1990.

Safety is a real concern that must be considered, but not by a return to the pre-1980 era of motor carrier protectionism of the few. Senator John Danforth has already introduced effective motor carrier safety regulation and enforcement in S. 2174 and a comprehensive highway safety bill in S. 1108. These bills, which provide for better enforcement of safety regulations and annual inspection, will undoubtedly put marginal truckers and marginal equipment out of business. The most fit will survive. This further narrowing of

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the field of competition will improve the profit picture in the long run for those who remain.

The most important type of Federal legislation that we feel is needed is not legislation that will impose further regulatory qualifications or restrictions on the industry, but quite the contrary. What this industry really needs is regulations imposed upon State regulatory bodies to make more uniform licensing, fuel, and authority requirements from State to State.

For a trucker to comply with the myriad of State laws regulating his business, he must file hundreds of duplicative but different forms with various departments in each State he traverses and carry dozens of documents in his truck. Three service bureaus such as Iowa Better Trucking Bureau employ full-time licensed attorneys to assist the truckers in filing paperwork that the States claim any trucker can complete. Nothing could be further from the truth.

Overly complex, burdensome, and unknown requirements continually cause truckers delay, lost refunds and fines on the road in their continuous effort to comply with all the requirements. New requirements catch full-time service bureaus, with professional staff, by surprise. How can a trucker be expected to keep up with the paperwork? Even the Federal Department of Transportation is interested in proposing legislation to make State requirements more uniform from State to State.

While we would never wish to revert to the regulation of 1935 to 1980, we feel the three types of legislation that we have outlined here today—total deregulation, safety, and State uniformity—are necessary to give us a new and healthy industry. Our truckers want to have a free marketplace to ply their trade, one with easy access and entry into operation and one that is safe, efficient, and one in which they are able to make a profit that is fair to them, the shipper, and to the consumer.

Thank you.

[The statement follows:]

STATEMENT OF PAUL H. FLETCHER, PRESIDENT, IOWA BETTER TRUCKING BUREAU, INC.

My name is Paul Fletcher. I own and operate the Iowa Better Trucking Bureau in Sioux City, Iowa. My company is a license and permit service for approximately 400 to 500 truck lines, owner-operators and independent truckers located primarily throughout Northwest Iowa, Northeast Nebraska and Southeastern South Dakota. It is the general consensus of these trucking interests that the free market view of deregulation is far more beneficial for them than the unnecessary government intervention and restriction that they have had in the past. Total deregulation will allow the independent truckers we serve to indiscriminately haul any commodity to any location for anyone, without having to pay a percentage of their gross revenue to a regulated ICC certified carrier for the use of "his"authority.[1] Deregulation also has sharpened competition so that rates have gone down substantially to the consumer for goods hauled. Thus, the Motor Carrier Act of 1980 was a good first step in achieving deregulation, but more deregulation legislation is needed to bring about a true free market in the trucking industry.

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[1] Presented by Transportation Attorney Robert J. Gallager, founder of Transportation Brokers Conference of America at a Brokers Conference in 1983 in New Orleans, La. He stated that independents and owner/operators should no longer be paying 25 or 35 percent of the gross freight rate to a carrier for the "privilege" of a lease. "Instead, he states, "you can go through a transportation broker who gets 5 percent commission for performing the same service as that carrier did."

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The Interstate Commerce Commission's ruling in Ex Parte MC-165 Sub 1 was a further step toward allowing more flexibility in hauling contract carriage. That ruling eliminated the requirement that contract carriers have to file tariffs with the Commission. An independent carrier may now file a contract carriage application to serve the industry, not just a specific shipper. Upon receiving his ICC contract carrier permit, he can contract with any shipper of any commodity moving between any two points in the United States.[2] This ruling is indicative of the trend towards less regulation by the ICC as promulgated by the ICC itself, in spite of an organized effort by the regulated interests to prevent the commission from implementing the rule.

There is no question, however, that less regulation has taken its toll on many truck lines and smaller independent truckers.[3] This has primarily been due to the continuing rise in operating expenses in the face of the rate wars which are being waged in the industry and being fueled by the shippers.[4] The end result of this particular problem will probably be a continued reduction in the total number of trucks and independents available. There are reports available now that indicate that the rate war bottom is near and that the thinning out process has slowed. Also, these reports show that private carriers can no longer haul their commodities on their own equipment at less cost than for-hire carriage by independents or owner-operators.[5] Those truckers that have survived the lower rates and have been able to replace worn out equipment expect to prosper from future market conditions.

We feel that some additional legislation is necessary in conjunction with further deregulation legislation. Early enactment of safety regulations may as a side benefit result in tempering the rate wars that exist, and this already proposed legislation will certainly save lives. Many shippers are allowing some marginal truckers to load their products on about anything that rolls. These marginal carriers have cut maintenance on their trucks to dangerous levels to remain competitive. It was reported at a hearing before a Senate Committee on Commerce in 1979 that more than 10,000 highway deaths had resulted from accidents involving medium and heavy commercial trucks. Such accident fatalities were growing at twice the rate of increased truck miles traveled.[6] Although this report was made before the Motor Carrier Act of 1980 and apparently not tied to deregulation, it still indicates a dangerous trend. More recently, the Iowa Department of Transportation has reported a 15 percent increase in safety violations written by its officers in 1983 over 1982.[7] The National Highway Traffic Safety Administration has projected a rise of 40 percent in traffic fatalities in medium and heavy trucks by 1990 with a decline in fatalities

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[2] Again from Attorney Gallager. He describes the Ex Parte MC-165 Sub 1 "as creating generic permits for the trucking industry." He states, "Carriers can now file a contract carrier application, not just to serve a specific shipper, but to serve the industry. The way the industry is defined is such that there are no holds, no limits, and no bars." (Overdrive Magazine Jan. 84.)

[3] Transportation Deregulation—On a Collision Course, by Attorney Paul Stephen Dempsey at page 16 states, "that Dun and Bradstreet reported that almost 400 motor carriers declared bankruptcy during 1980 alone, more than twice the number of the preceding year." He states that these figures, "represent only a small percentage of the trucking companies which have gone out of business." He later quotes a Mr. Richards, Wall Street Journal, March 31, 1983 at 50 entitled "Independent Truckers Who Hailed Regulation Reconsider As A Rate War Rages and Taxes Rise" stating, "the number of independent truckers has dwindled from 300,000 in the 1970's to just 100,000 today."

[4] We have attached a letter from a shipper to several area truckers. The letter is not unlike other letters, calls and conversations that have taken place between shippers, particularly powerful shippers, and truckers in a continuing effort to cut rates. See Exhibit No. 1 & 2.

Exhibits 1 through 4 have been retained in committee files.

[5] Read together an Article in the November 83 issue of Traffic Management at page 28, entitled "More for the Dollar" by Cooke and an article in Transportation Deregulation—On a Collision Course, by Attorney Dempsey indicates that our independent for-hire carriers are hauling at rates less than costs determined for private carriers by the Private Truck Council of America. In the article "More for the Dollar" Cooke states that a company named "Nuturn Corp" officials claims they operate their fleet for about 95 cents a mile compared to the National Average for private carriers of $1.26 per mile. In Transportation Deregulation—On a Collision Course, Dempsey at page 17, footnote 65 quotes a California attorney who states that an owner/operators typical long line haul compensation today is 74 to 82 cents a loaded mile and 50 to 60 cents for deadheading, when performed at the request of the authorized carrier. He further states that a low, but a compensation that will permit an owner/operator to barely survive, should be about 85 to 92 cents per loaded mile for West Coast operations. Both of these figures are considerably lower than that shown in Fleet Management as operational cost of private carriers.

[6] From Transportation Deregulation on a Collision Course, by Paul Stephen Dempsey at page 23.

[7] Presented by Gordon Sweitzer, Director, Motor Vehicle Division of the Iowa Department of Transportation to the IA DOT Commissioners at Ames, IA and again to the IA DOT Truck Advisory Committee in September 83.

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per unit of travel. (Exhibit No. 4). So safety was and continues to be a real concern that must be considered, but not by a return to the pre-1980 era of Motor Carrier protectionism of the few. Senator John Danforth (R-Mo.) has already introduced effective motor carrier safety regulation and enforcement in his Senate Bill 2174 and a comprehensive highway safety bill in Senate Bill 1108. Either enactment of these laws, if necessary, or more attention to enforcement of existing Federal Motor Carrier Safety Regulations [8] by states seem to be the direction of this legislation. These bills which provide for better enforcement of safety regulations and annual inspection may be even helpful because they will undoubtedly put marginal truckers and marginal equipment Out-of-Business. The most fit will survive. This further narrowing of the field of competition will improve the profit picture in the long run for those who remain.

The most important type of Federal legislation that we feel is needed is not legislation that will impose further regulatory qualifications or restrictions on the industry, but, quite the contrary, what this industry really needs is regulations imposed upon state regulatory bodies to make more uniform licensing, fuel and authority requirements from state to state. For a trucker to comply with the myriad of state laws regulating his business he must file hundreds of duplicative but different forms with various departments in each state he traverses and carry dozens of documents in his truck. Three service bureaus such as Iowa Better Trucking Bureau employ full-time licensed attorneys to assist the truckers in filing paperwork that the states claim any trucker can complete. Nothing could be further from the truth. Overly complex, burdensome and unknown requirements continually cause truckers delay, lost refunds and fines on the road in their continuous effort to comply with all the requirements. New requirements catch full-time service bureaus, with professional staffs, by surprise. How can a trucker be expected to keep up with the paperwork? Even the Federal Department of Transportation is interested in proposing legislation to make state requirements more uniform from state to state.[9] While we would never wish to revert to the regulation of 1935 to 1980, we feel that the three types of legislation that we have outlined here today, total deregulation, safety and state uniformity, are necessary to give us a new and healthy industry. Our truckers want to have a free market place to ply their trade, one with easy access and entry into operation and one that is safe, efficient and one in which they are able to make a profit that is fair to them, the shipper, and to the consumer.

Thank you.

[The following information was subsequently received for the record:]

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Have small communities in Iowa experienced any problems obtaining trucking service since enactment of the Motor Carrier Act of 1980?

Answer. The interstate traffic into Sioux City, Iowa before deregulation was as follows: Clark, Murphy, Crouse, All American, Hyman, P.I.E., Yellow, King, Holmes, Barber, Briggs, Denver Midwest, Sioux Transportation.

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[8] See attached Exhibit #3. "How the Federal Motor Carrier Safety People look at a Truck" for enforcement.

[9] From ATA, Interstate Information Reports Bulletin No. 83-11, dated November 23, 1983, entitled, DOT Bill Seeks State Tax Complexity Relief. "DOT Secretary Elizabeth Dole last week sent to Congress a proposal aimed at resolving the complexity of state taxation and regulation for interstate motor carriers. The proposal is based on the DOT findings resulting from a study conducted in 1980 and 1981 mandated by the Motor Carrier Act of 1980. Our studies estimate that administrative costs to the trucking industry will, complying with state tax and registration procedures, approach one billion dollars a year, she said. I believe this proposal has the potential to substantially reduce that cost to the trucking industry and to the consumers of the nation."

"Under the proposed legislation, the Secretary is authorized to establish regulations 12 months after the bill becomes law, enforceable through injunctive relief, with respect to "vehicle registration, fuel tax, and third structure tax requirements" for interstate carriers. Those regulations would seek (a) standardized procedures and forms, (b) base State certification, (c) single State units for filings, applications, and permits, and (d) to ensure prompt and equitabale, distribution of revenues."

"For the first 12 months after passage of the legislation, the proposal envisions a working group of state officials participating with other interested parties to develop and recommend regulations for the Secretary. Non-voting members of the working group could be appointed by the Secretary to represent other interested parties including the trucking industry." ATA Bulletin No. 83-11.

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One of the carriers listed above is out of business since deregulation, three have left Sioux City since deregulation and one plans to return.

Sioux Transportation—Out of Business.

Briggs—Removed to Sioux Falls but plans to return.

Barber—Removed, nearest delivery point—Sioux Falls, S.D.

Denver Midwest—Removed, nearest delivery point—Sioux Falls, S.D.

Eight additional interstate carriers have added Sioux City to their delivery point since deregulation, they are: Consolidated, Roadway, Churchill, R&R Transfer, H&W, Graves, Lewis, Northwest Iowa Express.

This is a gain of 5 interstate carriers serving Sioux City since deregulation. Traffic from these carriers is then either delivered by these carriers to the small communities or tendered to an Iowa Certificated Carrier holding intrastate authority. The State of Iowa has not followed the ICC and deregulated Certificated Carriage. Iowa appears to be reluctant to award new route authority to applying new applicants since carriers that currently hold Iowa Certificated Carrier authority are reporting that the industry doesn't need more carriers for the freight business to the small Iowa communities. (See attached letter from a Le Mars, Iowa carrier that holds an Iowa Intrastate Certificated Carriers Permit.)

Interstate traffic to the small Iowa communities is equal to or better than before deregulation, while Intrastate traffic to the small Iowa communities is just the same as before federal deregulation. This being because Iowa has not deregulated, and because we still have the small number of Certificated Carriers in Iowa serving the same routes as before deregulation.

LE MARS TRANSFER CO., INC.,
Le Mars, Iowa, January 26, 1984.

TRANSPORTATION REGULATION BOARD,
Colony Building,
Des Moines, Iowa

We would like to protest this application by R & R Transfer Co. Inc. under docket number listed above.

Granting this authority would decrease our business and at this time the trucking industry doesn't need more carriers for the freight business is down now as to compared to what it has been in previous years. I don't believe that this would be able to be justified in the matter of convenience and necessity.

If necessary we would be available for a hearing.

Yours truly,

DWIGHT J. WOLBERS.

Question 2. In your testimony, you advocated total deregulation of the trucking industry. What benefits do you think such action would bring?

Answer. Deregulation will provide for a more competitive trucking industry and will reduce regulatory burdens on the industry. Deregulation certainly has not hurt truck sales. October 83 figures of the Motor Vehicle Manufacturers Association indicate that for the seventh consecutive month truck production eased upward. October 1983 truck sales were up 55 percent from just a year ago. 84,667 more trucks were purchased in the October 1983 calendar year than in the year ending October 1982 according to the report. A person or business that has concerns with the economy or that is concerned about deregulation does not purchase a new truck, yet 238,639 new trucks were sold in the year ending October 1983. Further, forcasts indicate tonnage growth will increase from a present 2,200 million tons in 1983 to nearly 3000 million tons in the 1990's with the greatest trucking growth in the exempt and contract carrier type of trucker and Class 1 and Class 11 carriers following at a slower rate and private carriage declining (figures from 34th annual Produce Marketing Assn. Seminar reported in the December issue of Refrigerted Transporter magnize on page 74). This is a positive indication of future industry growth and deregulation has opened that market to more individuals to share in the growth. Regulated Motor Carriers of Refrigerated Products will enjoy a 47 percent growth in 1984 and a 6 percent growth in 1985. Regulated Carriers of Agricultural Commodities will enjoy a 4 percent growth in 1984 and a 5 percent growth in 1985. (Same article.)

Senator PRESSLER. Regge Rude was not able to get through the snow from Redfield. Skip VanDerhule from Yankton is here. Why do you not come up and take the empty chair, Skip.

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STATEMENT OF VERNON C. SKIP VANDERHULE, VANDERHULE MOVING & STORAGE, INC.

Mr. VANDERHULE. Senator, for the record my name is Vernon C. Skip VanDerhule from Yankton. I am president of VanDerhule Moving and Storage, Inc., and by way of explanation to those who are not familiar with me, our business has been in operation since 1922.

We only derive about 10 percent of our revenues from moving and storage, about 10 percent from nonmotor carrier activities, and about 80 percent from other regulated motor carrier activities. Basically, we are integrated. In terms of vehicles, we operate anywhere from a pickup truck to an 80,000 pound gross weight vehicle.

Mr. Pressler, first I would like to say that the Surface Transportation Act of 1982 makes substantial increases in revenues that motor carriers are going to pay. I think that historically motor carriers have been willing to pay those. It might be interesting to point out that when that act was passed, the revenues to be raised exceeded the net income of the motor carrier industry by almost six times. Yet the motor carrier industry some way is going to pay this. We recognize that, we know it is going to happen.

However, it is my opinion that public interest and demand for these taxes is split between the automobiles, pickups, light vans on one hand, and upon the commercial vehicles upon the other hand. In other words, the public really does not care whether a single straight truck is overpaying its taxes or whether an 18-wheeler is underpaying its taxes, so long as the motor carrier industry collectively is paying its taxes.

There have been good technical support produced by DOT in their working papers on alternative tax studies which was mandated by the Surface Transportation Act, which supports various taxing forms and various ways to do it. Once again, is this what the public wants or the public really cares about?

If the public really wants the motor carrier industry to pay so much money in taxes as a collective group, then leave it to the motor carrier industry on how to pay those taxes. In your December newsletter you asked the question of why should a part-time use truck such as a farm vehicle or such pay the same taxes as one that is doing many thousands of miles per year?

I would point out that under the existing Federal use tax I have one vehicle that operates daily, but only about 1,000 miles per year, which is paying the tax. Now, there would be exemptions under some of the proposals for low-use vehicles like mine, but currently we are paying the tax.

You are quite right about that, it is not an equity. But I wanted to come up with an example of something which would be more of a full-time use vehicle which would have a similar inequity to it. So I took a household moving van. The cross-country van you see going up and down the interstate highways is pulling between a 42- and 45-foot trailer.

While thev can now go to larger trailers, I do not see this happening in this particular industry because these vehicles have to go to residential streets. You cannot put the big 45-foot trailers down the residential streets. They just cannot go there.

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I took an example earlier this summer. We had a vehicle like that fully loaded, in fact so loaded there was an overflow, which means a second vehicle had to take part of the shipment. This shipment included an automobile. Based on weight and cubic foot inside that van it was higher than normal. That truck was grossed out at only 46,460 pounds, yet by manufacturer's specifications that truck is fully legitimate to go to 80,000 pounds. There is no place to put it in there. It will not go.

Likewise, a truck like that in terms of miles traveled per years just cannot do as much. Unlike a fast-loading cargo, household goods have to be inventoried and have to be loaded. For a full van like that you might look at 2-day inventorying and loading time, 1½ days to unload; 60,000 miles a year for such a truck means that truck really has to go to work.

It is in the written material which I have already presented to you or to your aide, but I essentially did a calculation based upon figures contained in the working paper study, and those calculations essentially show that a household goods moving van compared to an 80,000-pound truck is either overpaying its share of taxes by eight times or the larger truck is underpaying by eight times, depending on your point of view. So there is another example I think that can be worked with.

I am quite concerned about some of the results obtained in this working paper study. Very specifically, these working papers recommend and suggest a Federal ton-mile tax. I would point out, of the eight tax options offered in the study, there are two superior to the tax options of the ton-mile tax, and they are right in the working papers and they are the options of a higher diesel fuel tax and a reduced Federal use tax.

In both the options in which this was considered, the taxing ratios both for light vehicles such as cars and pickup trucks and the heavy combination trucks are more favorable in terms of equity than are either one of the ton-mile tax proposals.

There is one other benefit, too, which I think has to be given some consideration on a fuel tax as a method of raising additional revenues. I think the past decade has shown quite clearly that concern over fuel costs that go up. There is an attempt at improved efficiency, better fuel economy, in other words. Placing an additional tax on motor fuel will encourage greater fuel efficiency. We have a national goal of energy independence. This will encourage energy independence by increasing fuel efficiency of motor vehicles.

That cannot be done to the vehicles operated today. That means one thing. That means new vehicles, that means jobs, that means jobs in the manufacturing industry of trucks.

So the alternative of the diesel tax has some side benefits that are very good for the country, namely reducing your fuel consumption and also producing employment. I think they are part of public policy and something that has to be considered.

Senator, thank you very much.

[The statement follows:]

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STATEMENT OF VERNON C. VANDERHULE, VANDERHULE MOVING & STORAGE, INC.

Mr. VanDerhule, "Mr. Chairman: It must first be said that this testimony is given upon the assumption that revenues to be generated under the Surface Transportation Assistance Act of 1982, (STAA), will remain intact.

The revenues to be raised under the STAA do indeed represent a step forward towards the necessary improvement of the Nation's highways. However, it is my opinion that the public support for the allocation of revenues to be obtained under the STAA rests between light commercial and non-commercial vehicles such as cars and pickups on one hand, and with all larger vehicles on the other hand.

The STAA called for a study of alternatives to the heavy truck use taxes. The "Working Papers on Alternatives to Tax on Use of Heavy Trucks", July 1983, US DOT, goes to great lengths to differentiate between classes of commercial vehicles, running from the less than 26,000 GVW vehicle to the over 750,000 GVW vehicle. While I believe there is good technical support for making distinctions in user fees between the various classes and combinations, I have seen no general public support and only extremely limited industry support for the allocation of revenues based upon various commercial vehicle classes and combinations.

As such I feel that the input given by the motor carrier industry must be given strong, if not overriding consideration in enacting changes to the heavy truck use taxes as set out in STAA. If the industry is willing to live with a condition whereby their single vehicle units and their combination units under 70,000 GVW pay a greater tax than their cost responsibility, so long as the motor carrier industry as a whole pays a tax equal or greater than the industry cost responsibility, then it is the industry's prerogative to do so. This should not be overridden by the bureaucrats and statisticians just because there is a technically more accurate way to allocate the revenues. No matter what method is determined, there will always be a "technically more accurate" way to allocate the revenues.

In the Senator's December 1983 newsletter it is questioned why a part time truck operating about 15,000 miles per year should pay as much use tax as that belonging to a huge trucking corporation and running up to 200,000 miles per year.

I would like to make several comments on this. To begin with, under the Pre-STAA use tax schedule, I have a vehicle that runs less than 2,500 miles per year that, is paying the tax. I also have a line tractor that we use as a spare vehicle, that in some years has run less than 5,000 miles, and it also pays the tax.

On the other hand, I have no vehicles that run in the 200,000 miles per year range. Our company's top mileage vehicle runs 120–130,000 miles per year, and we consider this to be excellent utilization. I am aware of vehicles that do run in the 200,000 mile range, and all of them are in agricultural transportation, i.e., grain or cattle, and these vehicles are frequently loaded to 80,000 GVW and above.

However, to add a legitimate example of inequity in the use tax as set out in STAA, an examination of a household goods vehicle might well be in order. This appears to be a good example to be used because we can talk about a vehicle that is in full time use and not one that is parked in a parking area much of the year.

A typical over the road, long distance, household goods moving van is today running with a 44′ trailer. It is questionable if larger trailers will be in common use because of the need for such vehicles to travel on residential streets. Such a vehicle most always operates with a truck tractor no different than those used on the 80,000 GVW combinations. (i.e. five axles on the ground)

But, because household goods have a much lower weight per cubic foot of cargo space, the overall gross weight of such a vehicle is much less than other vehicles of the same length and with the same number of axles that are carrying other commodities.

Earlier this summer we had just such a vehicle loading in Yankton. We can give assurances that it was fully loaded because the particular shipment resulted in an overflow. This means not all the shipper's household goods could be gotten on the vehicle and some had to be left for a second vehicle. In addition, this vehicle was loaded heavier than might normally be expected because an automobile was loaded as part of the shipment. The scaled gross weight of this vehicle was 46,460 pounds.

In other words, it can be said that the larger intercity household goods moving vans that ply the nation's highways seldom if ever reach 50,000 pounds gross vehicle weight.

Weight is only one side of the matter. The other side is miles traveled. For a driver and one helper to inventory and load a 44′ household goods van, a minimum of two complete days is usually required. If the driver and helper also do the packing; which is sometimes the case, and other times done by a different crew; add another two days. Unloading and unpacking it one and a half to two days. Yet, this

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truck is near 100 percent utilization. Such a vehicle, parked at a shippers residence and being loaded, is in use. A typical annual mileage for such a vehicle is 60,000 miles or less.

If such a vehicle were to run 60,000 miles per year and be loaded all the time at 50,000 lbs, which is not the case, it would run 3,000 Million ton miles. If a vehicle were to be loaded to 80,000 lbs and run 200,000 miles per year, (and there are such vehicles), it would run 16,000 Million ton miles.

Under STAA, the 60,000 miles per year household goods vehicle would have a use tax of $860, or $860 per 1,000 Million ton miles. The 200,000 mile per year vehicle would have a use tax of $1,900, or $119 per 1,000 Million ton miles.

It doesn't stop here. In DOT's Working Papers on Alternatives, at page III-7, an 800,000 GVW vehicle is shown to have a cost responsibility per mile of $0.17 per mile. A 60,000 GVW vehicle is shown to have a cost responsibility of just less than $0.05 per mile.

This means that the heavier truck will have a use tax of less than 42 per cent per 1,000 Million ton miles of the lighter truck, and yet have a cost responsibility per mile of travel that is 3.4 times greater.

We're now playing with figures but if 42 percent is divided by 3.4, it would be found that on a 1,000 Million ton miles traveled basis, combining both use tax paid and allocated cost per mile at the various GVW weights, the heavier vehicle is only paying 12 percent of what the lighter vehicle is paying.

By all applicable criteria used in the STAA mandated study, of which the July 1983 "Working Papers" are a preliminary result, the STAA use tax on trucks is without question inequitable to household goods moving trucks.

The "Working Papers on Alternatives to Tax on Use of Heavy Trucks" provides nine (9) alternatives. All nine fall within two broad categories. The first is to adjust in some manner the combination of revenues raised between motor fuel taxes and use tax. The second is a completely new tax.

I think there is no question that these working papers are biased in favor of a completely new tax structure, saying that ". . . the type of alternative tax that holds the most promise is one that substitutes a weight-distance tax for the heavy vehicle use tax."

The case for bias in the report is made as follows: Some of thee study criteria include the following: Equity, Economic Efficiency, Productivity, Administrative Feasibility, Payment Ease and Compliance and Enforcement.

The Working Papers go to great lengths to point out that some of the alternatives that would adjust fuel tax and use tax have administrative and enforcement problems, and on more than one occasion point out that reducing the number of potential taxpayers reduces administration and enforcement problems.

The Working Papers do not make a single statement on the ton mile alternatives about administration, enforcement, or the total number of tax papers. These items are just passed right over.

Yet, it is common knowledge in the motor carrier industry that one of the easiest taxes to cheat on is a ton mile tax. Administration problems would be infinitely complex in that to audit a vehicle owner, the miles the vehicle traveled would have to be known.

Large trucks, especially those with a few hundred thousand miles already on them, are notorious for odometer problems that are very real. Put a tax like this on miles traveled and there would be more odometer failures than could be imagined.

A federal ton mile tax would be very much like a "voluntary" tax for many truck owners. I am not aware of many people who pay "voluntary" taxes. Witness the 1982 Individual Income Tax Returns whereon citizens could make voluntary payments to help reduce the national debt.

In Section VI of the Working Papers, eight (8) separate tax tables are set out showing the STAA taxes and several of the alternatives. In each and every case, the "revenue to cost ratio" shows that all Single Unit weight classes, and Combinations in the 50-70,000 GVW range will over pay their assigned cost allocation. In three, the Combinations under 50,000 GVW also over pay; in the seven in which these under pay, the rations are .95, .93, .85; .97 & .95.

For 70-75,000 GVW vehicles, all eight examples show underpayment. A composite average of the eight is .865. For over 75,000 GVW vehicles, the composite is .676.

It should be clear that the problem with sufficient revenue for cost allocation rests primarily with the over 75,000 GVW vehicles. The 70-75,000 GVW class has a shortfall, but it is relatively minor. (Both ton mile charts show a 10 percent shortfall for the 70-75,000 GVW class, and if the proposed ton mile taxes were worked properly, this should not have happened. Nor under a ton mile tax, should lighter weight vehicles been over taxed.)

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Of the eight tax charts in the Working Papers, the two alternatives resulting in the lowest revenue to cost ratio for both Automobiles & Motorcycles and Pickups/Vans, AND having the highest revenue to cost ratio for Combinations, are two of the alternatives rejected by the Preliminary Conclusion to the Working Papers. These are the two alternatives that would increase the diesel fuel tax and cap the use tax to a maximum of $950. In fairness, however, as far as the Single Units are concerned, only one other chart had a higher revenue to cost ratio, and this class already overpays in all chart examples in the Working Papers.

While not perfect, it would therefore appear that some approach of an increased diesel fuel tax and use tax would result in the most equity. It should also be pointed out that each of these taxes is an existing tax and a whole new tax structure would not have to be created.

At this point, some discussion of the two most likely forms of taxation, diesel fuel tax and annual use tax, is in order.

The diesel fuel tax, by its very nature, is a hard tax to avoid. With large motor carriers, having their own fuel storage facilities, it is fairly common to see purchases of diesel fuel without the payment of the federal tax to the supplier. The motor carrier makes the tax payment. Since such companies are subject to frequent audits in the first place by various state and federal agencies, it is unlikely that much tax evasion takes place here.

At the commercial pump level, evasion of the diesel fuel tax is almost nonexistent by the purchaser, although the vendor might fail in his tax returns.

Regarding noncompliance, a very nice word for tax evasion, of the existing use tax, page V-3 of the Working Papers states that the General Accounting Office says 7 percent don't pay. The American Trucking Associations say the rate is 50 percent. The truth, depending on how you define 'Noncompliance', is somewhere in between. But if the evasion rate was one-third, then the remaining two-thirds have to pay a 50 percent higher tax to yield the same revenue. This is unfair to say the least.

It is reasonable to assume, and has frequently been proven the case, that the higher the tax rate, the more attempts at tax evasion are made. STAA is talking a BIG increase in user taxes.

My review of the Working Papers seem to indicate the following relevant points:

1. No matter what formula was used, autos, motorcycles, pickups, vans, Single Unit Trucks as a class, and the combinations of 50-70,000 GVW are going to over pay their taxes.

2. With regards to combinations in the under 50,000 GVW range, and the 70-75,000 GVW range, in some cases they will over pay, in slightly more cases under pay, but in either case, they will not be too far off the mark.

3. The over 75,000 GVW combinations will under pay in all circumstances by a significant amount.

4. It is alluded to in Option 4, that the axle loadings on some Single Unit Trucks is excessive and that they will under pay. Probably examples of this are gravel and garbage trucks, wherein both high axle loads and relatively short wheel base lengths are found.

5. Not well laid out in the Working Papers is the case of the under 50,000 GVW combinations. In many cases we are talking about three axle combinations, or five axle combinations such as household goods moving vehicles. The important thing to remember about the vehicles in this class is that they either have relative long wheel bases, or low axle loadings. Their cost per mile relative to weight is less than it would be for a vehicle of similar weight, but in a different configuration.

Based upon my reading of the Working Papers, and the relevant points set out above, I believe the greatest Equity, Economic Efficiency, Productivity, Administrative Feasibility, Payment Ease and Compliance and Enforcement can be obtained by a tax package incorporating the following concepts:

1. The Federal Fuel Tax be increased for all diesel powered vehicles over 10,000 GVW.

2. An Annual Federal Use Tax would be applied to only limited classes of vehicles. Single Units with licensed GVWs greater than 30,000 lbs, and Combinations with license GVWs greater than 75,000 lbs., would pay a significant use tax. Combinations registered with a licensed GVW between 70-75,000 lbs. would pay a use tax, but significantly less than for the other categories. The use tax applied would increase at a progressive rate as registered license GVW increased, and not at a straight line increase for additional weight. (Not unlike Graph III-1 in the Working Papers.) There would be no cap on the Use Tax.

I have spoken about several different forms of taxation. However, one method has some benefits aside from ease of collection and payment, administration, equity, and so on.

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That tax is the fuel tax and what is now established history that as fuel prices go, vast improvements in fuel economy are made. One current engine manufacturer is currently running advertisements showing the improvements in their engines in the past decade in terms of lbs of fuel consumer per horse power of output. They are claiming a near 50 percent improvement. It is important to remember that this improvement comes at the same GVW and not thru reduced weight, which has been the single most important factor in fuel savings in automobiles.

As fuel taxes go up, so does fuel conservation. We have a national policy and goal of fuel conservation. By using fuel taxes as a vehicle for funding STAA, we help obtain another national goal.

But even at this, there is still another national goal with which using the fuel tax method helps obtain. That goal is jobs. There is a lot that can be done to help improve the fuel efficiency of older vehicles, but often time it is expensive and in some cases may even exceed the current value of the vehicle. One of the best ways to improve fuel efficiency is to trade in that old inefficient vehicle on a new fuel efficient vehicle. Any way you say it, this spells jobs.

A last comment on the Annual Use Tax on Heavy Trucks. There have always been complaints as to the application of the tax and cases of specific inequity aside from those already discussed. The first case is that the low mileage vehicle. Any Annual Use Tax on Heavy Trucks should have a low end mileage exclusion.

The second complaint comes when an existing vehicle is damaged or destroyed. As things currently stand should a motor carrier have a vehicle subject to the tax on July 1st, the tax runs the entire year no matter what happens to that vehicle. If that vehicle should be totally destroyed on July 2nd, and replaced with a new vehicle on July 3rd, the motor carrier then pays a double tax for the same operation for that tax year. Vehicles totally destroyed, and their titles turned in to the State, should be subject to a use tax refund.

Mr. Chairman, in conclusion, the important matters are those of equity between the non-commercial and small commercial vehicles, i.e. those under 10,000 GVW, and larger vehicles, and the total revenues generated by and between those two interests.

It is reasonable to allow the motor carrier industry to decide how the motor carrier industry allocated the taxes, so long as the final amount of tax to be raised is not altered.

This is best done by working within the general framework of existing taxes and with taxes that are proven not only hard to avoid, but easy to audit.

Senator PRESSLER. I think any questions I have here would be repeating some of the earlier points that have been made here today. This will bring to a conclusion the formal part of the hearing.

Let me say that in my years in Congress, back in the days I was in the House, we had a vote on airline deregulation, which in those days was touted to be the great thing of the future. And there were only 6 votes against it in the entire House of Representatives, of which I am proud to say mine was one, out of 427 votes cast.

Since that time, I have found myself opposed to deregulation legislation as coming to its final form. I was the only member of the Commerce Committee to vote against bus deregulation. There were others that voted against train and truck deregulation along with me. But more and more there is a growing reassessment.

I am not saying we do not need some changes, but basically these bills have been reregulation rather than deregulation. And I have perhaps devoted more time to transportation problems. Indeed, I just worked with the Governor's office on the Western Airline thing last week, trying our very best to bring that to a more satisfactory solution than seems to be the case.

But the point is, I think this hearing and what we have heard this morning is very important, because it is really the first note of dissonance, so to speak, that official Washington is hearing about this, believe it or not, according to the studies we have heard

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about, and according to the hearings. I have been rather alarmed this message is not getting up.

So I do want to thank our witnesses very much who have come a considerable distance. We have heard from both sides. This has been a balanced hearing. We have heard some industries who like the present situation.

I am not saying we have to take that away, but I do think there should be some amendments to the Trucking Competition Act of 1983. I think we have to be very careful about sunsetting the ICC on January 1, 1987, regarding rates and entry. I think we have to take a very careful look at the Motor Carrier Act of 1980 for possible updating.

We will be following this up with a series of actions. Many of you are already on our mailing list with matters regarding transportation, but if you are not, please sign the list, because we will give you the followup to this meeting. There will be several steps I will take, several direct action meetings and activities in the Commerce, Science, and Transportation Committee.

I do want to thank those who attended in this ground blizzard and school closings. This is a large turnout and I think that it indicates a high rate of interest in this matter. I wish to thank you very much.

Many of you may have written statements or thoughts that you want to express. We do have here, as I mentioned, the representatives of the Democratic staff and Senators and of the Republican staff and Senators, working respectively for Senator Hollings of South Carolina and Senator Packwood of Oregon, and my own transportation expert.

Again, I want to thank the people that came out from Washington, because they have made a long trip. So with that, I am going to continue this informally with anybody who wants to visit, and please avail yourselves of the people from the Federal Government.

I would urge that everyone read carefully the following statement submitted by Mr. Dale Peterson. The statistical evidence contained in Dale's testimony not only graphically illustrates some of the problems deregulation has caused, but it gets across very well something that is too often overlooked by many in Congress and even the industry who discuss the recent tax increases.

The heavy user fee was not the only tax increase the truckers were hit with in the 1982 legislation. The following testimony highlights the other truck-related tax increases, and gives an illustrative real-world example of how they have affected a real business.

There are many in Washington who will learn much about the real world by this example.

[The statement follows:]

STATEMENT OF DALE R. PETERSON, DISTRICT MANAGER, HYMAN FREIGHTWAYS, INC.

Mr. Chairman and members of the committee, my name is Dale Peterson. I am district manager for Hyman Freightways, Inc., a common carrier based in St. Paul, Minnesota, serving 10 Midwestern States, including South Dakota. My office is located at our Sioux Falls, S. Dak. terminal. I am responsible for the Western division including all of our South Dakota operations. We serve approximately 133 cities in the State.

I would like to point out what has happened within our company since the implementation of the Motor Carrier Act of 1980. As you all know, there are many new

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carriers serving South Dakota, causing many to struggle to continue their present operations and many of us haven't. I would like to point out our annual tonnage figures in and out of South Dakota:

	Tonnage
1980:	
Inbound	78,194,300
Outbound	29,544,500.
1983:	
Inbound	49,215,200
Outbound	17,882,000

That is a reduction of 37.1 percent on inbound and 39.5 percent on the outbound. Of course this has caused a drastic reduction in our South Dakota workforce and in February 1981 we were forced to close our Sisseton terminal which served 13 cities in Northeast South Dakota. Our company could not continue to serve this unprofitable area. Since the I.C.C. declared that a carrier is not required to serve all points named in their certificate, I'm sure you will see truck service deteriorate to the smaller cities and rural areas in South Dakota.

Some of the proponents of this bill have said that the customers are now enjoying cheaper rates. Except for some of the larger customers and cities that carriers have filed discount rates for, this is not true. I would like to give you some rate comparison to some cities in South Dakota that we serve. In 1980 the minimum charge from the twin cities to Sioux Falls was $21.85. Today the minimum charge is $41.00. The same minimum charge from the twin cities to Centerville, Beresford or Alcester in 1980 was $26.75 and today it is $49.30. From Kansas City in 1980, a mimimum to Sioux Falls was $23.25 and today it is $43.80. That same minimum in 1980 from Kansas City to Centerville, Beresford and Alcester was $27.60 and today it is $50.70. As you can see, the smaller communities are paying a premium for truck service and I'm sure this trend will continue to worsen and many of them will not have any truck service available at all. I would also like to point out what effect the new tax bill has had on Hyman Freightways.

Fuel tax based on 1983—purchases

1983	$42,185
1984	94,944
Increase (125 percent)	52,759

Tire tax based on 1983—purchases

1983	$21,138
1984	46,377
Increase (119.4 percent)	25,239

Lubricating oils and truck parts based on 1983 purchases

1983	$831,500
Tax assesment	66,500
Total	898,000
1984	831,500
Reduction of	66,500

Excise tax on equipment purchases based on 1984 estimated aquisitions

Prior to Apri. 1, 1983	413,700
1984	473,700
Increase (14.5 percent)	60,000

Heavy vehicle use fee—(Highway use tax)

Use tax paid based on 1983 fleet	39,300
Use tax to be paid July 1, 1984 based on 1983 fleet	253,925
Increase (546.1 percent)	214,625

Total taxes assessed

1983	$582,823

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Proposed taxes 1984	868,946
Increase of (49.1 percent)	286,123

Mr. Chairman, as you can see, these new taxes, if not amended, will have a devastating effect on our company as well as the entire trucking industry. The trucking industry with diminishing profits cannot absorb these costs and must be passed onto the consumer or put many carriers out of business.

I want to thank you for your time and I would hope you carry my message back to Washington and hopefully get some of these problems within our industry worked out.

Senator PRESSLER. So with that, I will declare the formal part of the hearing closed, and the record will be open for 10 days. Thank you very much.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

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ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF DENIS R. ZEGAR, ON BEHALF OF THE NATIONAL-AMERICAN WHOLESALE GROCERS' ASSOCIATION

My name is Denis R. Zegar and I am Vice President for Government Services of the National-American Wholesale Grocers' Association. I very much welcome the opportunity to submit this statement for the official record to this Committee which is conducting annual oversight hearings on the Motor Carrier Act of 1980.

By way of further introduction, NAWGA is a national trade association representing nearly 400 independent wholesale grocers and food service distributors. These companies, both large and small, supply grocery products and provide a wide array of services to retail grocery stores, hospitals, schools, restaurants and other food service establishments throughout the United States. Marketing products from over 800 separate distribution centers, NAWGA member companies account for nearly $50 billion of the nation's grocery product volume and ⅓ of the grocery supply distributed nationally. NAWGA's food service division, the International Foodservice Distributors Association (IFDA), represents member firms that sell annually over $10 billion in food and related products to the institutional, away-from-home food service market.

As the record will show, NAWGA was a very active participant before the Congress and this Committee in the development of the Motor Carrier Act of 1980. NAWGA members are almost universally private carriers and use these proprietary fleets primarily to move products from warehouses to customer premises. Our members also rely very heavily on motor common and motor contract carriage, primarily for movements from suppliers to NAWGA member warehouses. So our members have a dual interest in assessing and taking advantage of the effects of the Motor Carrier Act of 1980. Let me say at the outset that these effects, by and large, have been extremely beneficial to our members.

As far as NAWGA is concerned, the Motor Carrier Act of 1980 is working in the marketplace for the benefit of our members and inevitably for the benefit of the ultimate consumer of food and grocery products. So, as NAWGA views it, the ICC has been doing its job both as to the letter and spirit of the Act in carrying forward the intent of Congress to introduce meaningful, new competition into the regulated trucking industry and to maximize the options that are available to private carriers in making their own proprietary fleet operations more efficient.

BACKHAUL ALLOWANCES

NAWGA members and the ultimate consumer of food and grocery products have benefited greatly from Section 8 of the Motor Carriers Act of 1980 which permits sellers of food and grocery products who sell on a zone delivered pricing basis to offer backhaul allowances up to or a percentage of what would have been the actual transportation costs had the sellers been responsible for delivering the products to the buyers. I am very happy to say that a significant number of food and grocery suppliers have already put into place back-haul allowance programs. These programs have allowed NAWGA members, as food wholesalers, to utilize their private fleets much more effectively and, thereby, to minimize the number of empty backhaul miles that had been previously experienced before Section 8 became effective on July 1, 1980. Prior to that date, many food wholesalers had no incentive to divert their trucks and drivers, which may otherwise have been coming back empty from an outbound delivery to NAWGA member customers, to the distribution points or plants of food and grocery suppliers. The reason was that there were few backhaul allowances of any degree of attractiveness offered by these suppliers as an offset to the zone delivered price of the food and grocery products. Now, however, the situation has changed dramatically for the better.

It is common practice among NAWGA members, virtually every one of whom has a substantial private fleet operation, to utilize their fleets to pick up food and grocery products where practicable from suppliers selling on a zone delivered pricing basis because of the granting of backhaul allowances. So instead of coming back

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empty from the vicinity of a food and grocery supplier, NAWGA members now can use their private fleets to load their vehicles with inbound product and receive compensation in the form of a backhaul allowance for such an inbound movement. Moreover, NAWGA members, where it is not practicable in a given instance to use their private fleet, may also make arrangements with a regulated for-hire carrier with whom they deal to be their designated carrier for purposes of picking up goods at a supplier's place of business. The NAWGA member then pays the designated for-hire carrier and in turn receives from the seller the same backhaul allowance. In this situation, the supplier recognizes either a NAWGA member's own private fleet or the NAWGA member's designated for-hire carrier for purposes of granting the appropriate backhaul allowance.

I am happy to say that NAWGA has been highly instrumental in fostering a fuller implementation of Section 8 of the Motor Carrier Act by publicizing terms and conditions of backhaul allowances granted by food and grocery suppliers. This is an ongoing service which is still being refined by NAWGA to its members and derives directly from Section 8 of the Motor Carrier Act.

SUPPLEMENTAL OPERATING AUTHORITY

NAWGA members as private carriers have also been able to improve their proprietary fleet utilization and thereby to reduce and in some cases eliminate empty mileage both on outgoing and incoming movements. This has been done by obtaining from the Interstate Commerce Commission supplemental operating authority as common or contract carriers. Our members then serve non-affiliated, outside shippers on a basis which complements the in-house proprietary transportation requirements of such wholesale grocers. The Motor Carrier Act, through its liberalized entry provisions, has greatly facilitated the granting by the Interstate Commerce Commission of such operating authority to NAWGA members.

This authority is held in two ways. NAWGA members, as corporate entities, sometimes apply in their right for supplemental operating authority. This is the so-called Toto approach deriving from the landmark 1978 decision of the Interstate Commerce Commission in Toto Purchasing & Supply Co. Private carriage continues with supplemental for-hire carriage being conducted. The other approach is for the wholesale grocer as a corporate entity to perform a wholly-owned trucking subsidiary. Then the subsidiary takes over the in-house trucking operations and performs identical service for its parent as the parent had once performed for itself as a private carrier. This can be done on an exempt for-hire basis pursuant to Section 9 of the Motor Carrier Act of 1980 permitting compensated intercorporate hauling. Moreover, the trucking subsidiary then performs regulated for-hire carriage as a common or contract carrier for unaffiliated outside shippers.

Many NAWGA members have obtained Toto authority and have created trucking subsidiaries. Indeed, the interest of NAWGA members in obtaining supplemental operating authority has been so great that NAWGA has published and makes available to its members a special truck transportation manual advising our members how to go about filing for ICC operating authority.

Incidentally, I would like to take this opportunity to complement the Interstate Commerce Commission with respect to its assessment and expeditious granting of common and contract operating authority. We have received no complaints from NAWGA members about any unusual difficulty in obtaining ICC operating authority, provided that they take the pains to prepare an adequate application for review by the Interstate Commerce Commission. So the Commission deserves appropriate recognition for the positive and constructive manner in which it has implemented the liberalized entry provisions of the Motor Carrier Act of 1980.

When our NAWGA members, operating proprietary fleets, obtain supplemental operating authority, they are able to enhance their non-transportation primary business activity by making their trucking operations more efficient. For example, if a food wholesaler has an outbound movement of goods from its warehouse to its retail or institutional customers at a remote location but no return haul, it makes the trucking operation costly and of course wastes fuel deadheading on return. Now NAWGA members, in addition to being able to obtain backhaul allowances for picking up their own goods from sellers as previously recounted, may obtain ICC operating authority to serve a non-affiliated shipper who needs service from the general area of the wholesaler's customer back in the direction from which the movement originated, namely, near the wholesaler's warehouse. By serving such shippers through ICC operating authority, the wholesaler is able in many instances to fill his vehicle, offer a needed service to the shipper in question and earn revenue on the

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return haul. This helps offset proprietary trucking costs and goes a long way towards eliminating the expenditure of fuel for deadheading.

A variation of the example arises where wholesalers have not been able to develop their primary business in a given geographical area to serve retailers and institutional customers because private carriage was too expensive without an offsetting backhaul. With both Section 8 backhaul allowances and the ability to obtain supplemental operating authority to serve an outside shipper, many wholesale grocers can finally afford to develop new business territories. This is possible because they can achieve backhaul revenues either in the form of backhaul allowances or through operating authority by serving other shippers on the return haul. This tends to open up new business for the wholesale grocers that is directly attributable to these provisions of the Motor Carrier Act of 1980.

In still another instance, a wholesaler who has a backhaul but no outhaul is able to remedy the problem, in many cases, by getting supplemental operating authority to serve a shipper at the wholesaler's home location who needs service to the remote point. This gets the wholesaler's vehicles to the remote point where it can take advantage of backhaul allowances to pick up supplies it is purchasing from sellers of food and grocery products. So operating authority is helpful to wholesale grocers both on the inbound and outbound legs of a transportation movement involving the use of a properietary fleet.

SINGLE SOURCE AND TRIP LEASING

In its enlightened administration of the Motor Carrier Act of 1980, the ICC has issued favorable decisions which would permit NAWGA members as private carriers to single source lease trucks and drivers. The best example of a single source is the owner operator. In Ex Parte MC-122 (Sub-No. 2), the Commission decided to permit private carriers, including NAWGA members,to single source lease owner operators on an independent contractor basis. This would give NAWGA members as private carriers the same privilege as regulated carriers have had for decades. It would open up for the benefit for owner operators, for whom both the Congress and the ICC have had considerable solicitude, a brand new market for their services, namely, the nation's private carriers among which are NAWGA members. Unfortunately, this decision has been appealed and temporarily stayed by the federal court which is handling the proceeding. We expect a decision very soon and hope that it is affirmative because it will extend to NAWGA members as private carriers still another option which derives from the public policies underlying the Motor Carrier Act of 1980.

In another proceeding, Ex Parte MC-43 (Sub-No. 12), the Interstate Commerce Commission decided to permit NAWGA members as private carriers to trip lease their vehicles and drivers to ICC regulated common and contract carriers. Here, too, the ICC decided to eliminate a discrimination between private and regulated carriers and permit private carriers to have a parallel trip lease privilege to that which has been enjoyed between and among ICC regulated carriers. This decision, too, has been appealed and stayed and is before the same federal court. No decision is expected until sometime in 1984. So these two new options, which will be attractive to NAWGA members, have not yet become available. But when they do, they will be extremely helpful in improving fleet utilization.

For example, NAWGA members who are able to lease owner operators will be able to augment their fleets at will and give business to the nation's owner operators who need this business very desperately. By way of another example, if a NAWGA member has an empty outhaul or backhaul, he will gain an additional option of offsetting that haul by trip leasing his truck and driver to an ICC regulated carrier that happens to need an extra truck and driver. This will eliminate the empty haul, give the wholesale grocer an opportunity to earn some revenue from the lease of the truck and driver, make available an additional truck and driver for a specific trip to an ICC regulated carrier that needs them and eliminate the use of motor vehicle equipment on a dead head basis, thereby saving the expenditure of fuel relative to an empty movement. NAWGA has taken an active role in both these ICC and court proceedings on behalf of its membership and hopes that these options will be available soon.

BACKHAUL CLEARING HOUSE

In a further effort to help its members, NAWGA has implemented a backhaul clearing house. This is a computer oriented program and it is now underway. I am attaching to this statement a summary description of this clearing house. In essence, it will permit NAWGA members to achieve better traffic flows by making

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known their needs to other members for transportation service. Correlatively, NAWGA members being able to transport for other members, assuming they have appropriate operating authority, are able to use our clearing house to identify transportation opportunities. NAWGA is very excited about this concept and believes it will further the implementation of the various options to reduce empty mileage, both outhaul and backhaul, experienced with proprietary fleet operations. Credit must be given to the Motor Carrier Act of 1980 as implemented by the Interstate Commerce Commission is facilitating and stimulating in the marketplace the development of such a clearing house concept.

CONCLUSION

It has now been a little over three years since the Motor Carrier Act of 1980 went into effect. In summary, NAWGA's experience with the introduction of competition introduced by this Act has been very positive. From what we have seen of deregulation, we want more of it. To this end, NAWGA is supporting efforts to get the White House to release the bill drafted by the Department of Transportation at the White House request that would further deregulate and introduce more competition into truck transportation. Although we do not have all the particulars of the DOT proposal, we do think it is a movement in the right direction and that the Congress should be put in a position of giving serious consideration to the DOT proposal. NAWGA certainly will assess it once it is released and submit appropriate testimony to this and other committees which no doubt in the future will hold hearings on the desirability of further advancing the deregulation effort as far as motor carriage is concerned.

STATEMENT OF GEORGE R. FRENCH, ON BEHALF OF THE PRIVATE CARRIER CONFERENCE, INC., OF THE AMERICAN TRUCKING ASSOCIATIONS, INC.

I am George R. French, Vice President—Distribution Atlantic Cement Company, Inc. As President of the Private Carrier Conference, Inc., an affiliate of the American Trucking Associations, Inc., I am very pleased to submit this statement for the record in conjunction with the annual oversight hearings of this Committee called for by the Motor Carrier Act of 1980. It has been over three years since the 1980 Act was signed by former President Carter on July 1, 1980. Since that date there have been many changes affecting private carriers growing directly out of the Motor Carrier Act of 1980. These changes have been very favorable. I would like to summarize them for you so that you will be able to better gauge the impact, through the oversight process, of the 1980 Act in so far as it has affected to this date the interests of the nation's private carriers.

To better understand the changes which have occurred, it is important to note that from the time the Motor Carrier Act of 1935 was enacted to July 1, 1980 when the Motor Carrier Act of 1980 was enacted, there was an astounding growth of private carriage. In large measure, this was symptomatic of an overregulated motor carrier system because shippers (which, indeed, private carriers are in essence) found it increasingly attractive from the standpoints of both service and transportation costs to do a considerable amount of their own trucking on a proprietary basis.

With the introduction of very substantial marketplace competition through the 1980 Act, which codified in many respects reforms initiated by a very progressive Interstate Commerce Commission in the late 1970's, those shippers wishing to be private carriers have the ability to exercise numerous supplemental options, which I will shortly describe, that make for greater efficiency and productivity with respect to the conduct of proprietary operations. Moreover, and of parallel significance, those shppers who do not wish to engage in private carriage also have more alternatives because of the increased attractiveness, deriving from the Motor Carrier Act of 1980 and the ICC's interpretations and administration of it, of regulated for-hire motor carrier service. There are more for-hire carriers with liberalized entry; they are much more competitive, and they offer numerous attractive rate plans both for truck load and less than truck load traffic. No doubt some of this has been occasioned by the recession which we are now coming out of, but much of it must be attributed directly to the competitive climate stimulated and confirmed by the Motor Carrier Act of 1980.

So, in these respects, private carriers, in the view of the Private Carrier Conference, have been the beneficiaries of a wisely-drawn piece of legislation. I would like to turn now to some specific results of the 1980 Act as it has affected private carriers.

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COMPENSATED INTERCORPORATE HAULING

Section 9 of the Motor Carrier Act of 1980 permitted multicorporate families with 100 percent common ownership between related corporations to engage in exempt for-hire carriage, that is, conduct transportation within the corporate family with proprietary fleets on an exempt basis without the necessity of obtaining ICC operating authority. This was a great move forward and has greatly benefitted hundreds of members of the Private Carrier Conference itself. The ICC was very prompt to implement this provision of the Act in successive decisions in Ex Parte MC-122 (Sub-No. 1), all of which have been upheld completely by the federal courts.

A mere notice to the ICC has sufficed to allow nontransportation corporate entities to engage in compensated intercorporate hauling for 100 percent related corporations. This has greatly improved the economics of private carriage by reducing empty outhaul and backhaul mileage and, accordingly, has resulted in reduced fuel expenditure for empty payloads. Thus, intercorporate hauling exemplifies in a very concrete way the underlying application of public policy enunciated in the Motor Carrier Act of 1980. To date, the ICC has received 939 notices from parent corporations covering approximately 10,000 subsidiaries to the effect that they are conducting throughout the United States compensated intercorporate hauling. So this has worked out exceedingly well for the nation's private carriers who before 1980 were unable lawfully to effectuate compensated intercorporate hauling without obtaining ICC operating authority which to a great extent was largely unobtainable because of restrictive entry policies of the Commission prior to the late 1970's.

There still remains, however, a problem area with respect to intercorporate hauling at the state level. A few states, such as California, have adopted similar provisions exempting intercorporate hauling on the same basis that it is exempt from operating authority requirements at the federal level. Some states have totally deregulated motor carriage operations so it is a moot issue. But most states still regulate motor carriage and regard compensated intercorproate hauling as for-hire carriage that calls for the issuance of operating authority.

Authority is costly and in some cases very difficult to obtain, depending on the particular state involved. It acts as a curtailment, to a significant degree in some cases, on the utilization of a proprietary fleet which is called upon to conduct combined interstate and intrastate intercorporate operations. So there remain inefficiencies at the state level with respect to the fullest implementation of compensated intercorporate hauling. We call this to your attention because I know that you are concerned with the impact now and in the future of the 1980 Act on intrastate trucking operations when they are conducted on a basis that is integrally related to interstate operations.

BACKHAUL ALLOWANCES

As you will recall, Section 8 of the Motor Carrier Act of 1980 permitted sellers of foods and grocery products with zone delivered pricing to grant backhaul allowances up to what the actual costs for delivery would have been had not their buyers used their own private fleets or other designated carriers to pick up the goods they purchased from such sellers. This, too, has been a great boon to food and grocery buyers with private fleets, many of whom are members of the Private Carrier Conference. There has been widespread development among sellers of food and grocery products of attractive backhaul allowance programs. This Committee has already received the report last July from the Interstate Commerce Commission testifying to the success of these programs and to the benefits which consumers obtain with respect to the pass-through provision enacted by the Congress as part of Section 8 of the 1980 Act.

Backhaul allowances help reduce empty backhaul miles by offering an incentive to private carriers who purchase food and grocery products to utilize their trucks on a backhaul basis to haul the goods they are buying from sellers who otherwise would have them delivered either in seller-owned fleets or, as is more likely, through regulated carriers, both rail and motor, to the distribution centers and warehouses of food and grocery wholesalers and retailers. So this provision reflects the wisdom of the Congress in yet another way of helping to reduce emply backhaul mileage which has plagued private carrier operations for many decades and which now is really coming to be minimized because of the numerous options that are available to private carriers to help reduce and in some cases totally eliminate empty mileage to which their fleets had been highly exposed prior to 1980.

There have been some reports that the draft of further deregulation legislation composed by the Department of Transportation, which is now awaiting White House clearance, will also recommend to the Congress an expansion of backhaul allow-

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ances to other sellers with zone delivered pricing systems, that is, sellers who are outside of the food and grocery area. Whenever such a bill comes to the Congress, the Private Carrier Conference will of course review it and comment appropriately on any such proposed expansion.

TOTO AUTHORITY

The Interstate Commerce Commission issued a landmark decision in 1978 in *Toto Purchasing & Supply Co.*[1] It permitted for the first time private carriers to seek supplemental operating authority as common or contract carriers to serve outside shippers. In a real sense, the 1980 Act, in codifying the ICC's liberal entry provisions, confirmed this very crucial 1978 regulatory decision which has since been upheld by the federal courts. As a result, numerous private carriers have applied in their own right for common and contract carrier operating authority to supplement their ongoing private carriage operations. Thereby, these private carriers are able to further reduce empty backhaul mileage by serving outside shippers on a compensated basis pursuant to the ICC issuance of such operating authority. Not only are these shippers directly benefitted by getting additional trucking service, but so also are the private carriers who are able to run a more efficient operation.

One stumbling block with respect to so-called Toto authority was the ICC control over securities issuances of all motor carriers, including Toto carriers who are primarily non-transportation organizations. Chairman Reese Taylor of the Interstate Commerce Commission took the lead in 1982 and had a rider attached to the Bus Deregulation Act of 1982 totally eliminating ICC securities regulation over all motor carriers. His prime motivation was to help private carriers who wanted to have Toto authority and yet who could not subject themselves to ICC securities regulation by virtue of their non-transportation business activities. So Chairman Taylor deserves our commendation for the assistance in making Toto authority meaningful

With the elimination of the securities regulation, an increasing number of private carriers are obtaining supplemental or contract carrier operating authority from the ICC pursuant to the liberalized entry (shifting of the burden of proof) standards enunciated in the 1980 Act. Private carrier experience in dealing with the ICC as regards the obtaining of operating authority, both common and contract, has been very positive. Providing that a private carrier puts together a good case showing his fitness and detailing the public need for this service, the ICC will grant the operating authority.

TRUCKING SUBSIDIARIES

Another way in which private carriers have been utilizing incidental operating authority is to shift their proprietary fleet operations to specially-created and wholly-owned trucking subsidiaries. Then the trucking subsidiary applies for ICC operating authority to serve outside shippers and yet continues to render in-house transportation to its parent and related non-transportation subsidiaries in the same corporate family. The latter may be accomplished on the basis of compensated intercorporate hauling as described previously in this statement. There are many tax, managerial and other advantages, depending on individual corporate circumstances, which can be derived from the formation of a trucking subsidiary as a means of holding ICC operating authority.

This approach, too, was challenged and the ICC's grant of authority to trucking subsidiaries to serve outside shippers while at the same time serving on an exempt for-hire basis related corporate shippers has been upheld by the federal courts. So here, too, you see ICC decisions implementing provisions of the 1980 Act being sustained.

As with the case with Toto operating authority, assuming a sound application is prepared confirming the fitness of the trucking subsidiary and documenting the public need for the common or contract carrier service to outside shippers, the ICC has promptly and effectively issued such authority. This is all been to the good because it is another method by which private carriers have been able to reduce empty backhauls.

INTRASTATE PROBLEMS

As positive as has been the interstate experience with respect to private carriers obtaining supplemental operating authority, we must still report that there are continuing difficulties in many states as far as intrastate transportation by motor carri-

[1] 128 M.C.C. 873 (1978).

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er is concerned. These difficulties arise, with certain exeptions, with respect to states that still require that the applicant bear the burden of proof in obtaining common or contract carrier operating authority for intrastate purposes. True to say, a number of States have already deregulated such as Arizona and Florida. A number of others do not have rigorous entry requirements for obtaining operating authority. But in the main most states still have rather exacting requirements that are anti-competitive, particularly as regards common carriage, with respect to new entry into the trucking business.

This has handicapped those private carriers who obtain operating authority from the ICC for intersate operations, but who also need and have difficulty getting operating authority on a parallel basis to serve outside shippers at the state level. Strangely enough, this can also affect the private carrier who forms a trucking subsidiary at the state level. These trucking subsidiaries must obtain operating authority to serve their own parents as well as sister subsidiaries in those states where compensated intercorporate hauling is not recognized as a form of exempt transportation. In some cases, this authority is difficult to obtain even though no outside, unaffiliated shipper is to be served. Since these fleets are used for the dual purpose of accomplishing both interstate and intrastate transportation, these ongoing restrictions at the state level in our view continue to unduly burden the non-transportation companies that want to maximize the efficiencies made available through the Motor Carrier Act of 1980.

OWNER OPERATORS

We at the Private Carrier Conference are well aware of the solicitude of this Committee and the Congress in general about the economic plight of the nation's owner operators. These independent truckers have hauled exempt agricultural commodities and have for many years been leasing themselves and their equipment to ICC regulated common and contract carriers. To the extent that private carriers obtain operating authority, either as Toto carriers or through the trucking subsidiary alternative, they have been able to utilize owner operators as independent contractors, having been accorded by the ICC full privileges which accrue to regulated for-hire carrier status. So we are beginning to see in the aftermath of the 1980 Act a small, but steadily growing use on this basis of owner operators. To date they have been effectively foreclosed from directly accessing the shipper market. But when shippers obtain operating authority, there is a legal basis for them to lease owner operators parallel to that which has been favorably experienced by the traditional regulated carriers who are not in any way affiliated with non-transportation organizations.

SINGLE SOURCE LEASING

Continuing to follow both the letter and the spirit of the Motor Carrier Act of 1980, the ICC proposed a couple of years ago to allow private carriers to single source lease trucks and drivers. The best example would be the leasing of owner operators. Reference Ex Parte MC-122 (Sub-No. 2). However, the favorable decision of the ICC released in February, 1982, has been appealed and has been stayed by the Eleventh Circuit Court of Appeals. We expect a decision from the Court any time now. If the Court approves the ICC decision, it will be a direct basis for private carriers to lease owner operators as independent contractors. Then private carriers will not have to obtain operating authority in order to achieve this privilege and owner operators will have a huge shipper oriented market for their services.

TRIP LEASING

In order to eliminate the disparity between the privileges which private carriers do not have and which regulated for-hire common and contract carriers do have as regards trip leasing of trucks and drivers to other carriers, the ICC in November, 1982, issued a favorable decision in response to a petition filed by the Private Carrier Conference in the fall of 1980. Ex Parte MC-43 (Sub-No. 12). The decision would permit private carriers to trip lease their trucks and their drivers to ICC regulated carriers who need extra trucks and drivers for a particular haul. The privilege of trip leasing would allow a private carrier to avoid an empty outhaul or backhaul, depending on the situation, by allowing his truck and driver to be used by ICC regulated carriers. So trip leasing is a mutually beneficial concept. ICC regulated carriers are able to trip lease trucks and drivers between and among themselves.

This decision has been appealed, however, and has been stayed by the Eleventh Circuit Court of Appeals. So at this moment private carriers cannot trip lease their trucks and drivers to ICC regulated carriers, notwithstanding that many ICC regu-

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lated carriers want to be able to trip lease from private carriers. We do not expect a decision from the Court until sometime in 1984.

Underlying the Commission's decision in response to the Private Carrier Conference petition is the conviction that the efficiency of private fleets is a policy which furthers the Motor Carrier Act of 1980. Concomitantly, the ICC's decision will increase the efficiency of for-hire carrier fleets as well because it will afford them the ability to supplement their fleets with private carrier trucks and drivers on an individual trip lease basis when they are not being used by the private carrier in question.

But for the Motor Carrier Act of 1980, we do not believe that the ICC would have been in the position to eliminate this discrimination between private carrier trip leasing privileges and regulated carrier trip leasing privileges which has been outstanding for many decades. So in common with single source leasing, previously discussed, the ICC in the trip leasing decision has attempted, with success so far, to eliminate restrictions and discriminations imposed by the Commission years ago against optimum private carrier fleet efficiency.

CONCLUSION

I hope that this statement will communicate to the members of the Committee the essential satisfaction that private carriers have with the effects thus far of over three years of operation and experience under the Motor Carrier Act of 1980. I would like to compliment the Congress for its wisdom in effectuating such far reaching and positive legislative remedies to problems that have plagued private carriers for many decades and which grew out of the Motor Carrier Act of 1935.

I would also like to use this forum to publicly complement the leadership in recent years at the Interstate Commerce Commission. This includes the period in the late 70's immediately prior to the 1980 Act, the period immediately after the Act and currently at the ICC under the chairmanship of Reese Taylor. As far as we are concerned, the administration has been enlightened and the decisions helpful to private carrier fleet productivity. It is interesting to note that whenever challenged in the courts these decisions have thus far been universally upheld as fully within the scope of the Motor Carrier Act of 1980.

STATEMENT OF INTERSTATE CARRIERS CONFERENCE

The Interstate Carriers Conference [1] is an affiliate of the American Trucking Associations, who testimony before this Committee we support in full. These additional comments are submitted on behalf of a conference composed of some 750 common and contract motor carriers throughout the United States that carry all types of freight. They range in size from those with only a few units of equipment to companies operating 500 or more vehicles. They are equally varied in terms of operating revenues, approximately 30 percent having gross revenues of less than $1,000,000 annually and 20 percent having more than $10,000,000.

In supporting the final form of the 1980 Act, and since that time, the Conference has not in any way favored a return to regulation of old. On the other hand, however, we do not at this time believe sweeping, total deregulation of the industry is in the best interest of anybody—carriers, shippers or the public.

Proponents of instantaneously eliminating the Interstate Commerce Commission or Part II of the Interstate Commerce Act by a stroke of the pen fail to recognize or choose to ignore the numerous bricks of legislation and regulation carefully built through the years in an interconnected system. We have identified 122 such provisions in the appendix to this statement.

Torpedo that system in one fell swoop and within months the Congress will be besieged with plaintive cries from all sides for new regulatory legislation to cure one resurgent problem area after another.

Yet deregulation of motor carriage is the goal of the Interstate Commerce Commission, as now constituted.

In previous submittals to this Committee, we focused on the Commission's implementation of provisions of the 1980 Act relating to entry and rate regulation. As the Committee is well aware, there currently is virtually no regulation of entry and little, if any, regulation of rates.

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[1] Formed July 1, 1983, through merger of the Common Carrier Conference-Irregular Route and the Contract Carrier Conference.

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Now, in the Commission's zeal to totally deregulate motor carrier transportation by administrative fiat, a number of new issues—more important issues—have come to the forefront. They concern the Commission's total abrogation of any concern over safety of operations on the nation's highways, its blatant regulatory preference for transportation by rail carriers to the severe competitive disadvantage of motor carriers, and its refusal to obey and implement specific decisions by federal courts.

THE ISSUE OF PUBLIC SAFETY

Its own statistics show that during the 12-month period ending June 30, 1983, the Commission granted operating authorities to 4,793 new carriers. The total number of motor carriers authorized to perform services by the Commission, as of that date, was 25,342. At the close of fiscal 1980 the figure for total authorized motor carriers was 17,721. Thus, despite the severe recession of 1980–82, the Commission has caused the nation's highways to become far more crowded.

Certainly, decisions on whether or not to award a new carrier authority require the Commission to make a finding that such carrier is "fit, willing and able." With regard to a carrier's qualification to conduct safe operations, however, this statutory burden is met by a new carrier simply by advising the Commission that it is "familiar" with the Department of Transportation's safety regulations and is "willing" to comply with them. It is not required that this new carrier demonstrate a knowledge of applicable regulations, submit records of compliance, or take any other affirmative action to demonstrate its qualifications.

It is only required that the bare statement of "familiarity" be included in the applicant's statement accompanying a request for operating authority.[1] At page 6 of the cited decision, the Commission specifically abandons any responsibility for promoting safety of operations by indicating that the Department of Transportation has jurisdiction over such matters and that such agency's "primary jurisdiction and expertise" will be relied upon. No prior expression of satisfactory standing by the Department of Transportation is requested, expected or required.

Perhaps of more significance than the manner by which the Commission evaluates the safety qualification of carriers seeking new operating authority is a recent Commission action relative to its jurisdiction over practices of regulated carriers involving the lease of equipment and drivers in order to perform transportation services. In that action the Commission proposed to drop from its regulations the requirement that leases of equipment with drivers entered into by regulated carriers be for a period of at least 30 days.[2]

The regulation requiring leases of 30 days originated in 1951 when the Commission commenced regulating leasing practices of motor carriers. In the original report, *Lease and Interchange of Vehicles by Motor Carriers,* 52 M.C.C. 675, 725 (1951), the Commission stated its reasons for requiring the 30-day minimum:

"We convinced, however, that trip-leasing [that is, the lease of equipment and drivers for a single trip] and especially trip-leasing of equipment that is operated for the leasee by the owner, or employees of the owner, is inimical to sound regulation and proper administration of the provisions of Part II of the Act and our safety regulations. The rules prescribed herein will provide that leases of such equipment apply for a definite period. *Some minimum period is necessary to ensure proper inspection of equipment and check of the qualifications of the driver,* particularly where the latter is not an employee of the lessee, and we find that a minimum period of 30 days would be reasonable." (Emphasis added)

Thus, the only specifically stated rational for the requirement of a 30-day period for lease of equipment and driver is concern over safety of operations.

The Commission abandons any pretense at promoting safe operations on the Nation's highways at page 5 of its current decision by advising:

"In 1966 all of the Commission's functions, powers and duties relating to motor vehicle safety were transferred to the Department of Transportation. To the extent that safety concerns were a motivation for the 30-day rule, even if those concerns were still valid, the transfer of safety jurisdiction would make DOT the appropriate agency to maintain such a rule."

The Commission is mistaken both with respect to its analysis and to the effect of the 1966 legislation. First of all, it is the Commission, not the Department of Trans-

[1] *See, generally,* Ex Parte No. 55 (Sub- No. 43A), *Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property),* decision of the full Commission served August 8, 1983 (not printed), pp. 5–6.

[2] Ex Parte MC–43 (Sub-No. 15), Elimination of 30-Day Leasing Requirement (not printed), served August 29, 1983.

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portation, that is charged by statute (*See,* 49 U.S.C. § 11107) with regulating the leasing practices of for-hire carriers certificated by the Commission. More importantly, the Congress, in enacting both the 1935 and 1980 Motor Carrier Acts, establishing a transportation policy that requires the Interstate Commerce Commission in regulating motor carrier transportation to, among other things:

". . . promote *safe* . . . *transportation*—

". . . improve and maintain a sound, *safe* and competitive privately-owned motor carrier system."

Can it be said that the cited activities of the Commission are in furtherance of this policy? The Commission, on the one hand, increases substantially the number of authorized carriers permitted to operate on the highways. The Commission also reduces the lease period requirement so as to remove virtually any opportunity for regulated carriers employing leased operators to ensure proper qualification and equipment compliance with applicable regulations, while simultaneously exacerbating the task of the Department of Transportation.

How little the Commission concerns itself with safety is shown when it points its finger at the Department of Transportation. Safety is an ICC responsibility. The current Commission appointees, though, are acting in a fashion that predetermines Congressional intent, that is, they want total elimination of motor carrier regulation.

UNFAIR FAVORITISM OF RAIL TRANSPORTATION TO THE COMPETITIVE DISADVANTAGE OF MOTOR CARRIER TRANSPORTATION

There appears to be little question in the minds of most familiar with the status of regulation of the transportation industry that since 1980 the Commission has, by a variety of actions, unfairly and unjustifiably improved the competitive position of rail carriers to the direct and indeed disastrous detriment of motor carriers.

These actions probably commenced when the Commission exempted from rate regulation the transportation of trailers and containers on flatcars by rail carriers, as well as the motor carrier transportation of such trailers and containers when the motor carrier transportation was performed by the railroad itself.[3] Thus, rail carriers could offer shippers direct door-to-door service exempt from rate regulation with changes in such rates effected on a moment's notice when needed to respond to competition.

Motor carriers, on the other hand, were required to publish rates for the highway transportation of such trailers and containers, and could only compete with rail carriers on an extremely limited and in fact unfeasible basis.

The Commission could have resolved this competitive inequity, and in fact it appeared that precisely such competitive balancing was intended by the Commission when it issued a proposal that would have extended the exemption granted to rail carriers to all motor carriers, so that all aspects of TOFC/COFC transportation would be exempt from rate regulation. To date, some 31 months later, the Commission has yet to issue a decision in this rulemaking proceeding.[4]

For that 31-month period, motor carriers such as the members of the Conference, have been, practically speaking, unable to compete in this market. Available statistics from the Commission and other sources reflect the remarkable surge of TOFC and COFC traffic handled by rail carriers.

The Commission's unfair favoritism for rail carriers did not stop with "piggyback" traffic. In another decision, the Commission determined to exempt from economic regulation the transportation of any commodity by rail carrier when such transportation service was provided in boxcars.[5] And in another, the Commission proposes to award similar exemption relief to all rail transportation of frozen foods.[6] In both instances, the transportation of similar commodities and the provision of similar services by motor carriers are fully regulated economically, with rates requiring to be published, altered only upon statutory notice or by special permission application, and bound by the "reasonableness" requirements of provisions of Title 49, United States Code.

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[3] Ex Parte No. 230 (Sub-No. 5), *Improvement of Trailer on Flatcar and Container on Flatcar Regulation,* 46 Fed. Reg. 14348, Feb. 27, 1981.

[4] Notice of Proposed Rulemaking in Ex Parte No. 230 (Sub-No. 6), also entitle *Improvement of TOFC/COFC Regulation,* issued Feb. 19, 1981.

[5] Ex Parte No. 346 (Sub-No. 8), *Exemption from Regulation—Boxcar Traffic,* served May 2, 1983.

[6] Ex Parte No. 346 (Sub-No. 15), *Exemption of Rail Frozen Food Transportation from Regulation,* served Feb. 9, 1983.

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Historically, the Commission has employed its rail exemption authority to address circumstances where rail transportation of particular commodities remained regulated while motor transportation of similar commodities was exempt (agricultural commodities, as an example). The Commission has gone well beyond that and, in the decisions just cited, has in effect deregulated substantially all transportation services for rail carriers where there exists any competition with motor carriers.

Not only has the Commission favored actual rail transportation with substantial competitive advantages, it has, by a series of decisions since 1981, allowed rail carriers to compete directly with independent motor carriers through either railroad subsidiary motor carriers or by awarding rail carriers themselves motor carrier operating authorities.

Historically, the motor carrier subsidiaries of railroads were awarded operating authority generally restricted so as to permit such services to be employed only in conjunction with the rail transportation operations. This was known as the "special circumstances" doctrine. In a Notice of Proposed Policy Statement issued in October of 1981, the Commission proposed deletion of this "special circumstances" doctrine from its policy, thereby authorizing rail carrier subsidiaries to apply for and receive unrestricted motor carrier operating licenses. By decision served January 6, 1983, the Commission approved such policy.[7]

Not content with this form of encouraged vertical integration in the transportation industry, the Commission proposed on August 17, 1983, a further modification of this policy.[8] In such decision, the Commission removed limitations on acquisitions of motor carriers by rail carriers. Previously, Section 11344(c) of Title 49, United States Code, had been interpreted by the Commission so as to permit such acquisition only where the motor carrier transportation would be "auxiliary or supplemental to" the rail carrier service. The Commission, with typical self-fulfilling rationale, reasoned that its decision in Ex Parte MC-156 allowing unrestricted operating authority applications by rail carriers and their subsidiaries likewise required the removal of any limitation on acquisition by rail carriers of independent motor carriers.

Again, these Commission actions must be viewed and examined in connection with what this Congress has adopted as its transportation policy. In 1980, the Congress substantially rewrote the transportation policy as it was applicable to motor carriers. Section 10101(a)(7) was added, so that with respect to the transportation of property by motor carrier the Commission was obligated to regulate so as to ensure its preservation and adequate profit levels and encourage efficiency, among other goals. What the Congress did not change, however, was the basic policy requiring the Commission to ". . . recognize and preserve the inherent advantage of each mode of transportation."

By discriminating against independent motor carriers in forms of regulation, by encouraging vertical integration of a type and degree not contemplated by the Congress and, in fact, by refusing to take competitive "balancing" actions permitted, the Commission is in direct violation of the previously cited policy.

THE ISSUE OF OBEDIENCE TO COURT ORDERS

Reference was made at the outset to the Commission's refusal to obey and implement specific decisions of United States courts.

While to our knowledge this has happened a number of times, we shall provide the Committee with perhaps the best example and one that has been most pervasive in effect.

In an attempt to implement the Motor Carrier Act of 1980 with regard to the stated Congressional policy concerning entry regulation relaxation, the Commission promulgated rules and policies.[9] Among other aspects of this decision was the virtual requirement that carriers when seeking new operating authority conform their requests to rigid parameters set forth by the Commission both as to commodity, classification and territorial scope. Certain parties appealed such decision to Federal court, and in 1981 the United States Court of Appeals for the Fifth Circuit directed that the Commission revise certain policies contained in Ex Parte 55 (Sub-No. 43A).

Among the instructions by the court was one that would prohibit the Commission from requiring carriers to accept operating authority of a scope and including au-

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[7] Ex Parte No. MC-156, *Applications for Motor Carrier Operating Authority by Railroads and Rail Affiliates*, 132 M.C.C. 978 (1983).

[8] Ex Parte No. 438, *Acquisition of Motor Carriers by Railroads.*

[9] Ex Parte No. 55 (Sub-No. 43A), *Acceptable Forms of Requests for Operating Authority* 45 F.F. 86798 (Dec. 31, 1980).

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thority to transport commodities for which the applicant neither had requested nor deemed itself qualified. The petitioners in that court decision were required to return to the Court of Appeals for issuance of a writ of mandamus because the Commission had refused to implement the court's decision or to follow its dictates.[10]

Nearly two years subsequent to the Fifth Circuit's reversal of the Commission's policy in this proceeding, that agency on August 8, 1983, issued a notice of proposed rulemaking purporting to comply with the court's order. However, the Commission continued to adhere to the position that it could require carriers to accept operating authority they had neither sought nor wished to receive nor felt qualified to operate. In this specific regard, the type of authority under consideration is authority to transport bulk commodities.

The Commission maintained in its August 8 decision the position it had adopted previously—that except for applications for authority to transport "general commodities" no limitation or restriction preventing a recipient of a certificate or permit from transporting bulk commodities would be imposed. Chairman Reese H. Taylor of the Commission dissented from that decision, specifically referring to the Fifth Circuit's decision that "bulk service authority shall not be extended to carriers who cannot demonstrate that they are fit, willing and able to provide" such service.

As Chairman Taylor noted, such was directly contrary to the court's decision, and he concluded his dissent by advising:

"Moreover, the majority's decision to routinely grant bulk authority without regard to the facts of the proceeding is precisely what the Fifth Circuit condemned. Under the proposed rules, applicants will continue to request authority, not because they desire the authority, but because they are compelled to do so by the Commission. The Commission, in turn, will grant such authority regardless of whether the statutory requirements have been met."

This policy, of course, is that same policy that has been applied since the initial 1980 decision, subsequently set aside by the court. A very recent example of this policy in action is a decision in which a division of the Commission consisting of three commissioners denied an administrative appeal filed solely for the purpose of requiring the Commission to restrict the award of authority to transport "building materials" against the transportation of bulk commodities.[11] The Commission, in adhering to its previously described policy, refused to do so despite the fact that the applicant had specifically denied an interest in receiving such authority. At page 2 of the order, the Commission concludes its decision by advising applicant that it:

". . . has 30 days from the service decision to either accept or reject the authorization in total. Its acceptance, however, is expressly subject to and conditioned upon its willingness to accept the authority without a bulk restriction."

Thus, either the applicant accepts the certificate bulk authority or it suffers the loss of all of the authority applied for, supported by public evidence, and unopposed by the party protesting the application.

The point to be made from this discussion is that it does not appear that the Federal courts are any longer a viable avenue of relief or recourse so as to insure proper implementation, interpretation and enforcement of the Motor Carrier Act of 1980 in line with Congressional intent. It appears that only specific direct Congressional action will result in the Commission's discharging its obligations under that statute as this Congress intended those obligations to be so discharged.

Statement of the National Association of Independent Insurers

The National Association of Independent Insurers is a trade association representing more than 530 property and casualty insurance companies. Almost all of these companies have been affected by the insurance provisions of the Motor Carrier Reform Act of 1980. Based on that experience, NAII recommends that the current lower limits of liability be continued and that compliance with the insurance requirements also be tied to DOT's hazardous materials placarding requirements.

Since the Act was signed into law in mid-1980, NAII has closely monitored the insurance aspects of the Act and their effect on our member companies and the industry at large.

NAII continues to dispute the rationale used for imposing federal mandatory insurance requirements. However, we are pleased to report that from our perspective,

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[10] The writ of mandamus was issued by the court at 669 F. 2d 957 (1982), *cert. denied* 51 U.S.L.W. 3647 (1983).

[11] *John S. Furdek, Extension—Building Materials,* MC-156255, Sub. 1 (served Sept. 19, 1983).

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the insurance industry has responded positively to the requirements of the Act and the resulting regulations promulgated by the Department of Transportation.

The industry has had very little difficulty in providing the coverage and limits of financial responsibility required under the act. The ease in complying with the requirements in great part has been due to the high degree of cooperation between the representatives of the DOT and the industry in agreeing on common sense approaches to a number of critical issues.

There is another reason that availability and affordability of insurance has not been a problem and that is the continuing phenomenon of what we refer to as a "soft market." That is, there has been tremendous financial capacity in the insurance market which has resulted in strenuous competition for business. It is questionable how long this condition will last.

We think that another key to the success of the program has been the ability to delay implementation of the extremely high limits of financial liability ultimately required under the Act. We have previously testified that it is our belief that the present limits of liability are sufficient to satisfy liability claims arising from the vast majority of accidents reported and consequently adequate protection is afforded to the public. We would like to recommend that the Department of Transportation be given the authority and responsibility to determine the limits of liability based on developed data and that the higher limits of liability should not automatically be imposed on July 1, 1984.

One problem we did have, and to a certain extent are still having, is that when the Act was implemented there was no notification procedure. As a result, there was a great deal of confusion as to who actually came under the Act. We have some feelings yet that there may be a fairly high degree of noncompliance because of ignorance of the requirements of the Act. The Department of Transportation had previously recommended that compliance under the Act should be tied to the DOT's hazardous materials placarding requirements. NAII would like to voice its strong support for that recommendation.

In conclusion, we think things have gone quite smoothly and we foresee no change in this condition particularly if our recommendations for the continuance of the present lower limits of liability and the tying in of compliance to the placarding requirements are adopted.

Statement of the National Industrial Transportation League

The National Industrial Transportation League takes this opportunity to supplement its testimony on the impact of the Motor Carrier Act of 1980. It previously presented its views at the September 21, 1983 Oversight Hearing before this Committee.

As previously stated, we believe that the increased competitive flexibility created by reform has allowed shippers and carriers to explore pricing service options tailored to meet today's economic conditions. Without this flexility the League believes that the recession would have had a more severe impact on U.S. producers and the jobs they generate to meet the demands of our nation's commercial needs.

In addition to the Business Week article cited in our September testimony, we would like to supply data that appeared in Transport Topics, the newspaper of the trucking industry. In articles that appeared in the paper's October 10 (page 3) and October 17 (Page 5) issues, it appears that the trucking industry's recovery is even more impressive than originally indicated.

According to the October 10 article, a comparison of the second quarter of 1983 with that of 1982 shows that net carrier operating income rose by 80.6 percent and net income or profit rose by 78.2 percent—despite a 3.4 percent decrease in tonnage. Of the one hundred carriers surveyed, seventy-one reported an increase in net carrier operating income, with sixty-five reeporting an increase in net income.

When second quarter figures are compared on a 12-month basis, net carrier operating income rose 33.7 percent and net income rose 20.3 percent—despite a 5.8-percent decrease in tonnage levels.

According to the October 17 issue, a study of all Class I and II carriers showed the composite operating ratio for the second quarter of 1983 as 94.67. The ICC traditionally has found a carrier to be operating profitably if its operating ratio is 95 or less.

In addition, this study found that second quarter revenues for 1983 were four times that for the first quarter of 1983, and that net income for the first half of 1983 was up more than 430 percent over 1982 figures.

We believe that these figures reinforce our earlier premise that the trucking industry is fully participating in the general economic recovery. In fact, given that

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tonnage levels are depressed in one study, the trucking industry may well be recovering at a faster rate than general business and industry.

As indicated in our September testimony, the general membership last month reviewed our position on Motor Carrier Regulatory Reform Issues. By unaminous vote, League members supported continued reform of the economic regulations governing the trucking industry including the abolition of the industry's antitrust immunity for collective ratemaking.

Recent carrier actions have heightened our concern about the impact of collectively set rates on the less-than-truckload shipper. This concern is prompted by the Commission's failure to review these collectively set rates to assure their reasonableness for the shipping public who have no voice in the rate bureau decision making process.

Two of the major rate bureaus have announced they each are considering imposing a 12-percent across-the-board rate increase. They are taking these actions despite the fact that inflation last year was only about 5 percent. If these requests are granted, it is anticipated that the remaining major rate bureaus will soon follow suit. These collectively set increases especially disadvantage the LTL small shipper, since this is where the bulk of collective rate action is focused because entry reforms do not benefit this segment of the shipping public as quickly as they do the truckload shipper.

To help alleviate the plight of this small shipper, the League is supporting reforms contained in Ex Parte No. MC-172, Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments. In addition, we are supporting the agency in court where the trucking industry is attempting to block completion of this important rulemaking.

The most pressing problem facing our members who use truck transportation services is assuring the equitability of the taxes used to generate the revenues mandated by the Surface Transportation Assistance Act. Our members are deeply concerned that the heavy vehicle use taxes which become effective July 1 of next year, do not represent the most practicable and workable plan for funding the repair and rehabilitation of our nation's highways, and that these taxes could serve as an effective barrier to entry into the industry. We are especially concerned about these taxes' impact on small and medium sized carriers as well as on owner operators.

The League would favor a tax which would restore carriers to a pay-as-you-go basis, which would eliminate the financial burden created by a lump sum, up front payment, and which would improve compliance. We believe that S. 1475 meets these requirements and deserves serious consideration early in the second session of the 98th Congress.

We appreciate this opportunity to present the views of shippers.

Statement of Richard G. Velten, National Small Shipments Traffic Conference

My name is Richard G. Velten and I am an officer of the National Small Shipments Traffic Conference (NASSTARAC) and of the Drug and Toilet Preparation Traffic Conference (D&TPTC). My office address is 501 George Street, New Brunswick, NJ 08903.

Representatives of NASSTRAC and D&TPTC testified at the hearings which led to the passage of the Motor Carrier Act of 1980, which I will refer to as the "Act", and at the subsequent oversight hearings concerning the implementation of that Act. On behalf of the members of these shipper groups, over 300 campanies and industry associations shipping a large volume of LTL shipments throughout the nation at rates regulated by the Interstate Commerce Commission, we appreciate this opportunity to express our views.

ENTRY

The relaxed entry control standards of the Motor Carrier Act of 1980 continue of work well. Shippers are generally satisfied that they can add new carriers as needed and on an expedited basis. The Commission has been continually revising its procedures of further simplify and expedite the path of new carriers seeking to extend their operations or to enter the field.

RATE REGULATION—A FAILURE TO FOLLOW CONGRESSIONAL INTENT

The clearest example of the Commission not following the dictates of Congress in the Act has been in the area of regulating motor carrriers' rates. Congress did not

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change the basic standards of legality for motor rates or the Commission's responsibility to review rate changes for conformity to the Act. Rather, Congress made it clear that rates must still meet the standard of being reasonable. Other interests will urge that there is no effective floor on rate reductions today. But our ox is being gored by the fact that the Commission refuses to acknowledge that rate increases can be unreasonably high in today's climate.

During the past year and one-half, the Commisssion has approved in toto every general rate increase by the rate bureaus, regardless of how inequitable. In that period, there have been rate increases on small shipments of over 30 percent. On March 25, 1983, the Commission refused to suspend or investigate general rate increases by nine major rate bureaus of $800,000,000 per year. The burden of the great bulk of this increase fell upon small shipments. While small shipments are made by both large and samll companies, the small companies are usually exclusively shippers of small shipments.

DISCRIMINATION

As noted, the general freight rate increases proposed by the rate bureaus for April 1, 1983, continued a pattern of increasing the relative burdens of shippers of small shipments. This is, every bureau proposed an increase on small shipments that was geater than the increase proposed for truckload shipments. And these proposals were made in spite of the fact that the expense increases claimed by the bureaus were not greater for small shipments than they were for large shipments. Many of the bureaus' "jutifications" for these increases admitted that the profitability of small shipments traffic was already far higher than the profitability of truckload traffic.

The provision of the Act prohibiting unjust discrimination against types of traffic has been administratively nullified when the Commission allows carriers to earn profits (before interest and taxes) of 20 cents on the revenue dollar on small shipments while they are losing 20 cents on the revenue dollar on truckload shipments.

THE COMMISSION'S FAILURE TO REGULATE RATE INCREASES IS INCOMPATIBLE WITH RATE BUREAU RATEMAKING

At least the majority, if not all, of today's sitting Commissioners can be described as "deregulators". Undoubtedly, they believe in the free market and that there is no need for them to regulate rates. Apart from the fact that this is a decision for the Congresss and not the Commissioners to make, the fact is that there continues to be an urgent reason to scrutinize and regulate general rate increases. The reason can be expressed in two words: rate bureaus.

LTL freight is not as competitive pricewise as TL freight. The most basic consideration is that a shipper itself cannot usually afford to undertake LTL deliveries economically, as it can do with truckload traffic which moves from one origin to a single destination in tact. Beyond that, new entrants into the motor carrier field tend to be truckload-oriented, as there is a large capital requirement for establishing break bulk terminals; and new entrants typically do not have that kind of funding.

As a practical matter, rate bureau meetings of territorial groups of carriers are collectively setting the general rate increases on LTL freight. Faced with dwindling TL volume and an increase in TL competitors, they consistently have been opting for the traditional rule of monoply pricing: charge as much as you please on the captive (LTL) market.

Though the carriers motivation and incentive are clear, it is not at all clear why the Commission has abandoned its statutory duty to regulate maximum rate increases under the present circumstances. While Congress thought that it was creating a better world for shippers by the Motor Carrier Act of 1980, the practical result, due to Commission inaction, has been the worst of all worlds for the LTL shippers: the carriers can collectively set rate increases and the Commission disclaims responsibility for examining their reasonableness.

During 1982 and in 1983 to date, the Commission's disregard of its statutory function to regulate rate increases was so complete that it did not suspend any general rate increases. Indeed, the Commission has reduced its staff of advisors on rate increases from 34 to only 7, eliminating 80 percent of the staff needed to do an effective job.

Only recently the majority of the Commission publicly verified its complete indisposition to perform its statutory responsibility to regulate rate increases. The Commission has two basic options to establish standards for reasonable rates, either on a case-by-case basis or in a general rulemaking proceeding. Since it has initiated no

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rate investigations during the last two years, the Commission has no pending rate investigations initiated under the reign of the present majority. What it has had on its docket for decision are: (1) several April, 1978 general increases still under investigation (I&S Docket Nos. 29772, et al., General Increase, SMCRC, April 1978) and (2) a rulemaking, Ex Parte No. MC-128, Revenue Need, Standards In Motor Carrier General Increase Proceedings.

The latter proceeding, a rulemaking, was instituted in 1979 as an aid to the final decisions in SMCRC, et al., immediately after it had issued a decision in SMCRC requiring a roll-back of that general increase. The finality of the SMCRC decision was stayed pending a decision in Ex Parte MC-128 in order to reconsider SMCRC in that light.

Thus, the Commission had pending for several years both a rulemaking and a rate investigation proceeding, either of which was an appropriate vehicle to inform the carriers and the public of standards for reasonable rate increases. What did this Commission do with those proceedings? On July 28, 1983, it issued a brief decision by majority vote, with Chairman Taylor dissenting, dismissing both the Ex Parte MC-128 rulemaking and the entire group of SMCRC, et al. pending rate investigations.

No more complete abdication of its ratemaking functions could be imagined. The Commission has told the world that it is not interested in reviewing rate increases and that it will not issue any standards as to what is a reasonable rate. Shippers look to this Committee to admonish the Commission in clear terms that Congress has not abolished rate regulation and that the Commission must discharge its responsibility to administer the Act.

This Committee should also do whatever is appropriate to obtain the confirmation of three new Commissioners with an understanding of the statute and a willingness to follow Congressional intent.

LIABILITY FOR FREIGHT DAMAGE

I would also like to point out an area in which the ICC's inability to monitor its decisions has negatively affected shippers, viz., liability for loss or damage to freight.

Notwithstanding a Commission order which clearly stated that the railroads would continue to be liable for loss and damage on TOFC/COFC traffic unless shippers agreed to the contrary, some railroads are accepting TOFC/COFC freight only if the shipper agrees to allow the railroad to limit its liability for loss and damage. The Commission has done nothing to stop this practice.

On its own, the Commission has rewritten the loss and damage statute for freight forwarders and household goods carriers by allowing them to self-limit the amount of their liability without the statutorily required showing that the "value would be reasonable under the circumstances". In its decision in the *Transconex* case, No. FF-305, the Commission has ruled that such carriers will be allowed to limit their liability to a specified value simply because it gives shippers an additional "option", regardless of whether the value limit is unreasonably low. It is clearly contrary to Congressional policy to thus relieve such carriers from responsibility for their own negligence.

THE FUTURE OF RATE BUREAUS

Up until the time that the Commission stopped regulating rate increases, NASSTRAC and D&TPTC supported the existence of rate bureaus, as excesses of collective ratemaking could be checked by exercise of the Commission's suspension power. Under current circumstances, these groups of shippers have withdrawn their support of collective ratemaking and are supporting the termination of antitrust immunity for rate bureaus.

Although certain of the functions of rate bureaus are "repealed" by the Act as of 1984, the key functions will persist, namely general rate increases. Although the majority of the Ratemaking Study Commission has issued a report favoring expedited repeal of the remaining antitrust immunity, there is no immediate assurance that Congress will enact such a change in the law.

Meanwhile, NASSTRAC and D&TPTC have taken the step of petitioning the Commission to remove rates on shipments under 1,000 lbs. from the scope of any Commission-approved collective ratemaking agreements. That petition is pending and no visible action has been taken on it. We suggest that this Committee recommend that the Commission expedite its consideration of this issue.

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CROWN-ZELLERBACH,
San Francisco, Calif., September 16, 1983.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PACKWOOD: Your consideration of our views in connection with Oversight Hearings on the Motor Carrier Act of 1980 will be appreciated.

We are pleased with the changes brought about through the passage of the Motor Carrier Act of 1980 and seek further deregulation as indicated below.

The provisions allowing increased opportunities for new carriers to get into the trucking business and for existing carriers to expand their services have increased competition between carriers and reduced the overall cost of transportation. The increased competition is not only among trucking companies, but also, between trucking companies and railroads.

Furthermore, the elimination of inefficient and fuel wasteful restrictions, such as gateway and circuitous route restrictions, has increased efficiency and reduced costs for the carriers by allowing them to operate via more direct routes. In many instances these cost reductions have been passed through to the shipping public and ultimately to the consumer.

In addition, the zone-of-rate-freedom concept embodied in the Act has given the motor carriers the ability to set rates in response to changes in the market place. This allows the free enterprise system to work much more efficiently than it could before the Act.

The Motor Carrier Act of 1980 was a step toward deregulation of the motor carrier industry—a step in the right direction. We urge Congress to continue in that direction by enacting further legislation which will eliminate all rate and entry regulation of the motor carrier industry. Such action will reduce costs, increase competition and fuel the economic recovery now in progress.

Very truly yours,

JOHN J. ARCHER,
Director of Logistics.

THE FERTILIZER INSTITUTE,
Washington, D.C. September 22, 1983.

Hon. BOB PACKWOOD,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: On behalf of the U.S. fertilizer industry, we respectfully request that this letter be entered into the record as The Fertilizer Institute's comments in regard to the Senate Commerce, Science and Transportation Committee September 21, 1983 Oversight hearing on the Motor Carrier Act of 1980 (P.L. 96–296).

Our comments are directed solely at Section 30 of the law. As enacted, it has placed an unnecessary financial burden on farmers and fertilizer retail dealers engaged in local, non-bulk distribution of fertilizer materials across state lines.

Section 30 prescribes a five-million minimum level of financial responsibility (covering public liability, property damage and environment liability) for for-hire and private carriage involved in interstate and intrastate transportation of hazardous materials. The law, however, gave the U.S. Department of Transportation the authority to issue regulations requiring higher or lower levels of financial responsibility.

In passing the Act, Congress was concerned as to the effect this legislation would have on businesses transporting small quantities of hazardous material. Therefore, Congress enacted Section 30 (b)(3)(B), which states:

"In the case of any class of vehicles transporting any such material, oil, substance, or waste in intrastate commerce other than in bulk, the Secretary, by regulation, may reduce such amount if the Secretary finds that such reduction will not adversely affect public safety."

Congress was further concerned that the Secretary of Transportation exercise the authority granted under Section 30 (b)(3)(B) so—"that local operations dealing with only small quantities of hazardous material will not be unduly burdened." (H.R. Report 96-1069, pg. 44). The Department of Transportation issued its final regulations regarding minimum levels of financial responsibility for motor carriers on June 11, 1981, and following the direction of Congress, stated in part:

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"It is therefore believed that, as to intrastate carriage of non-bulk hazardous materials, existing State laws and requirements adequately protect the public safety in those states and variations amongst such state requirements reflect the considered judgments of the respective state legislatures. Consequently, it has been decided to use the authority under Section 30 (b)(3)(B) to effectively exempt intrastate carriers on non-bulk hazardous materials from this rule."

Section 30 (b)(3)(B) of the Act provided the Department of Transportation flexibility to reduce financial responsibility levels for non-bulk intrastate transportation. However, this flexibility was not extended to interstate commerce. Thus, farmers and retail fertilizer dealers, engaged in local non-bulk fertilizer transportation—albeit across state lines—must meet the minimum levels of financial responsibility established by DOT. The intrastate transportation of the same material however, is exempted by regulation from meeting the requirements of Section 30.

Congress must address the local transportation of small quantities of hazardous material across state lines. We suggest that Section 30 be amended to allow the Secretary of Transportation, by regulation, to reduce the minimum financial responsibility for interstate commerce of non-bulk hazardous material. Such action would remove from the law an inequity that we submit Congress did not intend to occur.

We would be pleased to discuss this further with you or your staff and to supply additional information regarding this request.

Sincerely,

GARY D. MYERS.

AAA TRUCKING CORP.,
Trenton, N.J., October 27, 1983.

Senator BOB PACKWOOD,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: As a followup on our recent appearance before your Motor Carrier Oversight Committee, I am enclosing as Appendix "A" several illustrations of the Interstate Commerce Commission's unwillingness to suspend rates and/or as a minimum, call for an investigation of rates that were shown to be unlawful under the Interstate Commerce Act because they were below the cost of the proposing carrier.

Repeating my comments before your Committee, in the real world, the small and medium-sized carriers simply do not have the money to hire lawyers and cost consultants at $1,000–$5,000 per Petition for Suspension endlessly, and then have the Commission send back one signal after another that they will not suspend rates no matter how far below cost they are. The I.C.C. Commissioners are pursuing their own free marketplace philosophies rather than implementing and executing the presently effective provisions of the Interstate Commerce Act, which they have a sworn duty to administer.

Senator, it is just as clear as it can be, to me, that under the present Act, rates proposed by a carrier that are below his own cost of producing the service are unlawful; thus, when challenged, i.e., protested, the I.C.C. is obligated to suspend them and set the matter for hearing.

Senator, although some people may think that the trucking industry should eventually consist of only a handful of multi-billion dollar carriers, the facts are that today there are thousands of motor common carriers competing for a finite quantity of freight. Small and medium-size carriers should not be deemed to be inefficient. Because of their very nature, they experience different constraints and a different kind of operating environment than do the larger carriers. And, if they are to compete fairly for business, they should be afforded the protection given by the existing statute, i.e., the right to expect that the I.C.C. will not permit wholesale establishment and maintenance of below cost rates.

Lastly, and personally, I do want to thank you for the time and courtesies you extended before your Committee. It would have been easy enough to cut us off abruptly; you did not, and I do appreciate that. I was indeed steamed up that particular day by much of the prior testimony that preceded ours, but I surely meant no disrespect.

Personally, I have the greatest respect for our Government, its institutions, and its Leaders of which you are clearly one of its foremost members. Nevertheless, what you heard from me that particular day were the sincerely held views and convictions of thousands in our industry, which we passionately believe in, and which we are going to continue to fight for to the bitter end, if that is what is called for.

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We seek a fair, competitive environment to operate in. We believe we have a fundamental right to such a fair, competitive environment—nothing more, nothing less.

Respectfully yours,

GEORGE ZIGICH.

SOME ILLUSTRATIONS OF WHERE THE ICC HAS REFUSED TO SUSPEND REDUCED RATES THAT ARE CLEARLY UNLAWFUL UNDER THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

PRELIMINARY STATEMENT

Under the provisions of the Interstate Commerce Act [49 U.S.C. 10701(a)] all rates must be reasonable. Section 10701(b) provides that the ICC may suspend proposed rates for a period up to seven months during which time a hearing is conducted into the lawfulness of the proposed rates. Section 10701(c) provides that the carrier proposing the changed rates (respondent) has the burden of proof to demonstrate the lawfulness of the proposed rates.

Section 10706(b)(3)(B)(iii) prohibits a rate bureau from filing a protest, i.e., seeking suspension, against a proposed rate. In further response to your questions at the Oversight Hearing, the American Trucking Associations Inc., does not file protests against carrier rates. That task is the responsibility of the individual carrier, whether large or small.

Filing a protest against reduced rates believed to be unlawfully low involves the substantial expense of retaining counsel and a cost expert to draft the petition and ascertain the cost circumstances surrounding the particular movement. For several decades a body of law has been developed before the ICC which provides a basis for determining whether a rate is below variable cost and, therefore, prima facie, unlawful. Thousands of reduced rates are filed each day.

Thus, as a practical matter once it becomes clear that the ICC has absolutely no intention of exercising its statutory power to suspend rates, the carriers stop filing, in vain, suspension petitions. The only alternative remedy to eliminate an unlawful rate is for the aggrieved carrier to file a formal complaint. That remedy is of little help because: (a) the substantial burden of proving the reduced rates to be unlawful is shifted to the complainant; (b) the complaint route is more expensive and more time consuming; and (c) the proposed unlawful rates, not being suspended, become effective, thereby permitting the shipper to immediately shift the involved traffic to the carrier publishing the reduced unlawful rates. The examples follow.

All of the following cases involved rate discounts for various commodities on traffic moving via motor common carriers of property within the Middle Atlantic and New England territories. All of the involved tariffs were protested by motor carriers competing with the proponent carrier. Protestants presented evidence demonstrating that the proposed rates would produce noncompensatory revenues. In each instance, the Commission's Suspension Board refused to suspend or investigate the proposed tariff. In each instance, the protesting carriers appealed to an Appellate Division of the Commission which also refused to suspend or investigate.

In Suspension Board Case No. 70898, the carrier filed a discount tariff, to become effective August 23, 1982, proposing class rate discounts on shipments of automobile parts and related commodities from points in 12 Middle Atlantic and New England states and the District of Columbia to a plant at Newark, DE. The proposal was protested by another motor common carrier which presented evidence showing, among other things, that the proposed reduced rates were noncompensatory.

Memoranda obtained from the Commission under the Freedom of Information Act reveal that Commission cost finding staff agreed with the protestant that the proposed 25 percent discount was indeed noncompensatory. In a memorandum dated August 19, 1982, from the Chief of the Commission's Section of Cost Analysis to the Chairman of the Suspension Board, the Cost Section concluded that (1) protestant's cost evidence was developed in an acceptable manner, and (2) protestant's evidence accurately represented that the proposed 25 percent discount would produce revenues far below the costs of providing the service.

Notwithstanding this internal agency finding that the carrier's 25 percent discount was noncompensatory, the Commission's Suspension Board voted not to suspend or investigate the proposal. The Commission's Appellate Division, on appeal, likewise refused to suspend or investigate and the discounts became effective as scheduled.

In Suspension Board Case No. 70886, the carrier proposed class rate discounts ranging from 25 to 80 percent on various commodities moving between Baltimore, MD, and points in 12 eastern and midwestern states, to become effective August 17,

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1982. Three competing motor carriers protested, again presenting evidence showing that the proposed rates were noncompensatory Again, the Commission's Cost Section agreed—indicating that protestants' evidence accurately depicted that the traffic to which the discounts would apply would be tranported by the rate proponent for less than its cost of providing the service. This conclusion was conveyed to the Suspension Board in a memo dated August 11, 1982. Nevertheless, the Board voted not to suspend or investigate on August 12 and the Commission's Appellate Division reached the same result on August 16, 1982. The tariff became effective as scheduled.

In Suspension Board Case No. 70842, the carrier proposed discount rates ranging from 10 to 25 percent on numerous specified commodities from and to points in 14 Middle Atlantic and New England states to become effective June 13, 1982. The proposal was protested by 2 competing motor carriers on the ground that the rates were noncompensatory. Again, in a memo to the Suspension Board the Cost Section agreed that the proposed rates were below the variable cost of providing service. Again, the Suspension Board voted not to suspend or investigate and, on appeal, the Commission's Appellate Division also declined to suspend or investigate. The tariff became effective June 13, 1982.

Finally, in Suspension Board Case No. 70695, involving reduced rates on plastic materials and products and other articles, from North Andover, MA to points in 12 Middle Atlantic states, effective January 18, 1982, the protesting carriers introduced 50 comparisons of variable costs to revenues showing that the proposed rates were noncompensatory. In a memo to the Suspension Board of January 13, 1982, the Cost Section found that protestants' data supported their position that only 2 of the 50 comparisons had revenues which covered the variable costs developed. Both the Suspension Board and the Appellate Division refused to suspend or investigate and the tariff became effective.

As I indicated in my testimony, below cost pricing practices run rampant throught the industry. The above are but a few clear examples of where the Commission has recognized that proposed rates were noncompensatory but permitted them to become effective in the name of a free marketplace. There are undoubtedly many more examples of record; see, e.g., pp. 25–28 of Appendix A to my complete statement submitted at the Oversight Hearing. Hundreds more would exist but for the fact that the carriers now recognize the futility and substantial waste of time and money in filing suspension petitions.

UNITED VAN BUS DELIVERY,
Minneapolis, Minn., December 8, 1983.

Senator BOB PACKWOOD,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN PACKWOOD: The Motor Carrier Act of 1980 has permitted our company to enjoy substantial expansion. We have favored deregulation and we have been firmly opposed to collective ratemaking.

Our operating authority: To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general commodities, (except classes A and B explosives), between points in Illinois, Iowa, Minnesota, North Dakota, South Dakota and Wisconsin, on the one hand, and, on the other, points in the United States.

Our Rigging and Heavy Haul Division (Pratt's Express—Rocket Transfer) has been able to provide single carrier service to a substantial number of our customers whereas prior to deregulation, the line haul segment of the operation had to be performed by another carrier much to the displeasure of many of our customers. The single carrier aspect has permitted us to provide these services at more favorable cost levels than the previous combination of services.

Prior to deregulation, our company did hold contract carrier authority between all points in 48 states for the largest retail chain in the United States. That type of a dedicated operation resulted in many wasted deadhead miles returning to "home base". We now have the ability to fill out those empty miles in many instances which helps to reduce our overall operating cost to the benefit of our shippers.

Much of our operation extends into South Dakota and we have done noteable quantities of business into South Dakota, as well as from South Dakota, under the various marketing concepts outlined above.

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Would you please include my letter in the record of the December 15th hearing in Sioux Falls, South Dakota.

Sincerely,

ARNIE HILLMANN, *President.*

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., November 14, 1983.

Mr. JAMES H. ELDER,
President, NASSTRAC, c/o American Greetings Corp.,
Cleveland, Ohio

DEAR JIM: I would appreciate it if you could provide me with the following information regarding your comments at the recent Motor Carrier oversight hearings before the Senate Commerce Committee:

(1) The names of the customers in each town;
(2) How much is shipped to them on an annual basis;
(3) The typical size (weight) and frequency of shipment;
(4) The method and cost of deliveries; and
(5) Whether American Greeting Cards had more or fewer South Dakota customers since 1980.

As you know, this issue is of great interest to me, and your comments are very helpful. If you should have any questions or comments regarding the above, please contact Kevin Schieffer of my staff.

Thank you very much for your assistance in this matter.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

AMERICAN GREETINGS,
Cleveland, Ohio, December 13, 1983.

Hon. LARRY PRESSLER,
Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR SENATOR PRESSLER: I am pleased to respond to your request for additional information concerning American Greetings Corporation's operations in South Dakota.

While we have almost two hundred (200) customers in your state, I specifically mentioned during the hearing five (5) small communities wherein we have a total of eight (8) accounts which are Buffalo, Deadwood, Summit, White River and Hoven. While it is our policy to refrain from disclosing the names and specifics of individual customers, I can tell you that sales to these accounts increased 16.6 percent from 1980 to 1982.

Additionally, shipment size to these destinations is small with deliveries being made by United Parcel Service or such carriers as ANR or Roadway direct or via Hyman and Barber in interline service with other carriers. Seasonal products are shipped prior to the holiday and non-seasonal products move weekly or semi-weekly.

While the number of customers we served in 1980 was unavailable, our client base increased 6 percent from 1981 to 1982.

Motor Carrier service to these customers has been more than satisfactory. I can say this since no complaints have been received by my office in the last three (3) years as best as I can recollect.

Unfortunately, while our customers appear to be pleased with service, American Greetings Corporation is exceptionally displeased with pricing under the present collective ratemaking scheme. For instance, the minimum price paid to move shipments to those customers from our plant in Osceola, Arkansas as determined by carriers party to the Middlewest Motor Freight Bureau range from a low of $50.20 to a high of $57.20! By way of comparison, the minimum charge we pay under contract with an individual carrier to Fresno, California, more than twice as distant, is less than half as much. Fortunately for your constituents, American Greetings' terms of sale are freight prepaid; it must be exceptionally distressing when they purchase products FOB factory and have to pay the freight themselves. Further, you and they will be shocked to hear that this same rate bureau has a collective intent to raise prices 12 percent in the near future in spite of the fact that inflation is under 5 percent.

Senator, I urge that you join with Senator Packwood in his quest to eliminate antitrust immunity for the purpose of collective ratemaking. Only in this way can

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shippers and receivers of small shipments in South Dakota and the entire nation be guaranteed of rates made competitively in a free and open marketplace as opposed to the current system which offers no incentives for competition and productivity.

Please add this letter to the record of the December 15, 1983 field hearing in Sioux Falls.

Respectfully submitted,

JAMES H. EDLER,
Corporate Director of Traffic.

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., March 20, 1984.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR BOB: As my correspondence with Mr. James Elder indicates, I have tried to obtain from him some individual names or businesses he referred to at the September 21, 1984 oversight hearings on truck deregulation which were held in Washington, D.C. Unfortunately, none were forthcoming. This is the kind of problem we often have to deal with in rural states like South Dakota. Large shipping representatives and other proponents of deregulation speak in general terms, saying deregulation has not harmed rural America. But when you ask for specific, real-world examples, none can be produced.

That is why a hearing such as the December 15, 1983 hearing in Sioux Falls, South Dakota—out in the real world of rural America—is so important. When you listen to those who have to conduct day-to-day business in a deregulatory environment, we hear a different story than the one we hear in the Washington hearings—and the deregulation picture in rural and small-town America is not so rosy after all.

Thank you for your attention to this matter.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

MOMSEN TRUCKING CO.,
December 13, 1983.

Senator LARRY PRESSLER,
Empire Mall,
Sioux Falls, S. Dak.

DEAR SENATOR PRESSLER: While this will not reach you in time to be considered when you conduct your December 15th Commerce Committee Oversight Hearing, I wish to compliment you on your views as reflected in your December Newsletter.

The deregulation or re-regulation—call it what you will, must be changed. Some manner of causing truckers, whether 1 truck, 10 trucks, or 100 trucks, to charge realistic, compensatory rates, must be instituted at once.

With it a virtual free open field, (buy a truck and start hauling), a quick way to enter the market of existing traffic, and simply to cut the rate, little or no regard is given for costs, rate of return, replacement, etc. Additionally, where the common carrier still has to wait 30 days to take a rate increase, or now (thanks to my company's efforts) can in fact reduce a rate in 5 day's time, is simply antiquated and outmoded. We need total flexibility to address the marketplace and to be permitted to respond on an hour's notice or less in these two areas of rate adjustments—up or down. Why should the contract carrier have that advantage (over a common carrier).

With enforcement for all practical purposes at a zero level, the foregoing situation is running rampant.

It should be no news to you or anyone else, that the banking industry is withdrawing from the trucking industry as well, such withdrawal based principally on the foregoing (and related) existing and increasing conditions.

My company (because of heavy losses and the banking policy change) has been issued a new bank policy, effectively withdrawing approximately 40 percent of our borrowing base—this in a 60-day period. It may very well be the end of a business that I have headed (from its inception) for 34 years.

The industry needs immediate relief, the scheduled excise taxes must be rolled back, and if it is mandatory to reinstate this source of revenue (the excise tax on the

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Trucking Industry) it should be strictly on "user basis—not an impacting fixed fee per vehicle per part per component as is now scheduled to be further implemented, January 1, 1984. Your, and the entire congressional groups, urgent immediate help, on an emergency basis, is needed, now.

Very truly yours,

KARL E. MOMSEN, *President.*

P.S.—I strongly urge your total support of the H.R. 2124, and its companion bill S1475.

UNIVERSITY OF NEBRASKA,
INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES,
Lincoln, Nebr., February 9, 1984.

Hon. BOB PACKWOOD,
Chairman, Senate Committee on Commerce, Science and Transportation, Washington, D.C.

DEAR SENATOR PACKWOOD: The enclosed papers are submitted at the request of Mr. Alan Ferguson who represents the Public Interest Economics Foundation.[1] It is hoped that they might be useful to you and your committee as you consider the merits of motor carrier regulation. Should you find the papers relevant you may wish to include them in the written record of your committee's hearings on the issue. We would have testified in person at the hearings in Sioux Falls in December had our schedules permitted it. The thrust of what we would have said is contained, however, in the enclosed articles.

The paper by Anderson and Falcon summarizes results of an analysis of expected implications of motor carrier deregulation for a case-study area in rural Nebraska. The study area was chosen for its agricultural economic base, relatively low volume of traffic and limited access to competitive modes of transport. If deregulation were to create service problems anywhere, such problems would certainly be expected in the study area. Results indicated, however, that present common carrier traffic is remunerative, casting doubt on the existence of cross-subsidization. Morever, private carriage accounted for a relatively large proportion of total shipments, suggesting that lower rates under deregulation might attract increasing traffic to commercial carriers. Consolidation of traffic offers potential for major cost savings.

The paper by Felton on the inherent characteristics of the trucking industry attempts to set identify the fundamental technological factors of the industry which would determine its structure (concentration, condition of entry, product differentiation), behavior (price and product policies), and performance (static and dynamic efficiency) in the absence of regulation. The suitability of the way for multi-firm operation, the relatively small transport units, the relatively simple techonology, and the ease with which trucks can be transferred from one location to another in response to changes in demand all suggest that concentration and entry barriers would be low, product differentiation slight, behavior independent but not destructively competitive, and performance exemplary.

Felton's paper on the costs and benefits of regulating trucking operations attempts measure the gains (or losses) to society from such regulation. A priori consideration would suggest that the benefits do not offset the costs. Restrictions on entrance into the industry and limitations on the kind of commodities carried, the routes traversed, and the points served by regulated trucking firms contribute to circuity and small average loads. Rate regulation encourages wasteful service competition and fosters the kind of inflexibility which is inconsistent with adaptation to seasonal fluctuations in demand and spatial imbalances in traffic. Finally, restrictions on private and exempt carriage prevent such carriers from achieving the level of utilization on back hauls that would otherwise be attainable. As a result of these various inefficiencies, the costs to society of truck regulation appear to have exceeded $5.3 billion in 1976. The existence of potential benefits in the form of improved service is dubious, but, even if they are real, the benefit has been estimated at only $59 million, or about one percent of the social cost.

One of the costs of regulation identified in the 1978 article in the Quarterly Review of Economics and Business was the inability of carriers to respond to seasonal variations in the demand for truck transport. Such response was inhibited by route and commodity restriction, as well as by seasonally inflexible rates. Felton's paper on seasonal variations in demand developed a simulation model which demon-

[1] The materials referred to have been retained in the committee files.

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strated that, pursuant to plausible route restrictions, the seasonal variation in truck load was almost twice as great as in the absence of such restrictions. Pursuant to very generous assumed commodity authorities, the variation in truck load was, nevertheless, nearly 40 percent greater than without any commodity limitations.

Still another cost imposed by regulation is the exacerbation of spatial imbalances in traffic. Felton's paper on truck back hauls comments on the irrationality of traditional ICC policy of apportioning truck-line-haul costs equally to forward and back hauls despite the "joint-product" character of such movements. The paper represents the experience of Great Britain and Australia, where truck rates are free to adjust to the relative demands for forward and back-haul movements and estimates the economic cost of a contrary practice in the United States to be $180 million per year.

Finally, the paper in the cross-subsidization of rural areas by ICC-regulated trucking firm addresses the contention that small, isolated shippers and rural commodities are the beneficiaries of internal subsidization by regulated trucking companies. While excess revenues from same traffic and the nominal duty to serve high-cost shippers may be necessary conditions for such subsidization to occur, they are certainly not sufficient condition. Not only do truckers lack the incentive to accept money-losing business, but also, in practice, they find it relatively easy to evade such obligations. Furthermore, there are a number of reasons for advancing the opposite hypothesis, namely, that small shippers and sparsely-populated areas are the victims of discrimination rather than the beneficiaries: They enjoy less intramodal and intermodal competition, there is some tendency for operating authorities in rural areas to be dormant, private carriage is a less viable alternative for small shippers than large ones, and shipments from and to isolated regions tends to be less-than-truckload lot (LTL) to a greater extent than intercity traffic. Inasmuch as LTL rates are known to be more discriminatory than TL rates, the higher proportion of LTL traffic in rural origins and destinations is suggestive of discrimination against, rather than subsidization of rural areas.

Since the foregoing articles were published, the Motor Carrier Act of 1980 has been passed by Congress. While the act has mitigated some of the inefficiencies associated with extraordinarily stringent entry controls, it has not accomplished economic deregulation. Entry into the industry and the entrance into new areas, the carriage of different commodities, and the adaption of new routes are still matters of administrative discretions, rather than of business judgement. Agricultural carriers are now permitted to transport a few commodities in back haul to rural areas, but many opportunities for lessening the excess capacity of such carriers are lost because of the restrictions that remain. While private carriers may now engage in intercorporate transport for wholly-owned subsidiaries, this constitutes a miniscule improvement in the utilization of these vehicles.

All things considered, we cannot see any benefits from the continued regulation of the trucking industry. While some inefficiencies have been eliminated, far too many remain. As long as the ICC continues to exercise any jurisdiction over rates and entry, it will continue to be the object of controversy, and trucking executives will devote attention to regulatory matters that might better be directed to cost reduction and the generation of new business. In short, the time is ripe for the rapid phasing out of all restrictions on entry into and rates charged by the trucking industry.

Sincerely yours,

DALE G. ANDERSON,
Professor of Agricultural Economics.
JOHN RICHARD FELTON,
Professor of Economics.

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